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The **NORTH CAROLINA REGISTER**

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Volume 1 • Issue 7 • Pages 416-553



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately one hundred pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 12 issues.

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: Subscriptions.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include a reference to the Statutory Authority for the action; the time and place of the public hearing and a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Following publication of the proposal in the *North Carolina Register*, at least 60 days must elapse before the agency may take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule, cannot become effective earlier than the first day of the second calendar month after the adoption is filed.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in effect for the period specified in the rule or 120 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) In looseleaf pages at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) On microfiche. The microfiche edition is revised semi-annually (March and October) and can be purchased for forty dollars (\$40.00) per edition. Due to the volume of the Code, the complete copy can only be purchased on microfiche. The NCAC on microfiche is updated monthly by publication of a "List of Rules Affected" which sets out rules filed the previous month, the action taken, and the effective date of the change. This list is published in the *North Carolina Register*.

Requests for looseleaf pages of rules or the NCAC on microfiche should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes by be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Deadlines and Schedules
(April 1986 - March 1987)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Earliest Effective Date
04/15/86	03/25/86	04/01/86	05/15/86	06/14/86	08/01/86
05/15/86	04/24/86	05/01/86	06/14/86	07/14/86	09/01/86
06/16/86	05/27/86	06/03/86	07/16/86	08/15/86	10/01/86
07/15/86	06/25/86	07/02/86	08/14/86	09/13/86	11/01/86
08/15/86	07/28/86	08/04/86	09/14/86	10/14/86	12/01/86
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12/15/86	11/25/86	12/02/86	01/14/87	02/13/87	04/01/87
01/15/87	12/29/86	01/05/87	02/14/87	03/16/87	05/01/87
02/16/87	01/26/87	02/02/87	03/18/87	04/17/87	06/01/87
03/16/87	02/23/87	03/02/87	04/15/87	05/15/87	07/01/87

EXECUTIVE ORDER NUMBER 27

NORTH CAROLINA FUND FOR CHILDREN AND FAMILIES COMMISSION

The Governor's Commission on Child Victimization has determined that new programs are needed to assist, treat and rehabilitate victimized children and their families. It is further made to appear that private funds are available to sponsor such programs.

THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of North Carolina IT IS ORDERED:

SECTION 1. ESTABLISHMENT

The North Carolina Fund for Children and Families Commission is hereby established under the Office of the Governor. The Commission shall administer the North Carolina Fund for Children and Families which shall provide resources for intervention and treatment for victimized children and their families. The Commission shall be composed of five (5) members who will be appointed by the Governor to serve two (2) year terms plus the following three (3) cabinet officers or their designees who shall serve as ex-officio members: Secretaries of the Department of Administration, Department of Crime Control and Public Safety, and Department of Human Resources. The Governor shall also appoint a Chairman of the Commission who, in the discretion of the Governor, may or may not be a member of the Commission.

SECTION 2. FUNCTIONS

(a) The Commission shall meet regularly at the call of the Chairman and may hold special meetings at any time at the call of the Chairman or the Governor.

(b) The Commission shall have the following duties:

- (1) Act as trustee for the North Carolina Fund For Children and Families.
- (2) Assess the critical needs of victimized children and their families.
- (3) Receive gifts, requests and devises for deposit and investment into the trust fund.
- (4) Oversee investment of trust fund monies.
- (5) Solicit proposals for

programs which will be aimed at meeting identified service needs.

(6) Establish criteria for awarding of grants which shall include and emphasize the public-private partnership concept.

(7) Fund programs that in the discretion of the Commission, effectively and efficiently treat and rehabilitate victimized children and their families.

(8) Present a report to the Governor at the end of each fiscal year.

(9) Make recommendations to the Governor for statewide replication of effective and efficient programs.

(c) The Commission is authorized to execute such additional documents, including trust agreements, as may be necessary in order to qualify contributions to the Fund as charitable donations under the Internal Revenue Code of 1954 and the corresponding sections of applicable State law.

SECTION 3. ADMINISTRATION

(a) A staff consisting of a director and other support staff may be employed to carry-out the duties and responsibilities of the Commission. The staff shall report directly to the Chairman.

(b) Members of the Commission may be reimbursed for travel and subsistence expenses as authorized by G.S. 138-5. Funds for reimbursement shall come from the receipts of the trust.

(c) The administrative costs of the Commission shall be provided by the Governor's Office.

(d) All funds administered by the Commission shall be subject to audit by the State Auditor.

SECTION 4. IMPLEMENTATION AND DURATION

(a) This order shall be effective immediately.

(b) This commission shall dissolve at the pleasure of the Governor. In the event of dissolution, the assets remaining in the fund will be turned over to one or more organizations which themselves are exempt as organizations described in Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1954 or corresponding sections of any prior or future law, or to the Federal, State, or local

government for exclusive public purposes.

This 8th day of September, 1986.

EXECUTIVE ORDER NUMBER 28

PRIVATE DEVELOPMENT BONDS

WHEREAS, Section 103(n) of the Internal Revenue Code 1954, as amended, established a Federal Volume Limitation upon the aggregate amount of Private Activity Bonds (also commonly referred to as "Industrial Development Bonds"), the interest upon which is exempt from federal income taxation, and

WHEREAS, pursuant to powers of the Internal Revenue Code, a prior Governor of the State of North Carolina issued Executive Order 113 to establish one state wide Resource of the Federal Volume Limitations on "Private Activity Bonds" and to establish that the Resource be managed by the North Carolina Department of Commerce, and

WHEREAS, this Resource has been managed so that the system represents a major advantage in the effort to locate new and better jobs in industry, and

WHEREAS, this Resource has been managed so that existing industry has been assured that they could finance their expansions and create new and better jobs with Industrial Revenue Bonds, and

WHEREAS, this Resource has also been adequate to finance the needs of North Carolina's airports, its student loan program, and municipal downtown development projects, and

WHEREAS, the United States Congress currently has before it the Tax Reform Act of 1986, a proposed law which will establish (1) a new Unified Volume Limitation for tax-exempt bonds which meet new definitions of "private activity" bonds, and (2) exact new delineations of such bonds to be included under these federal limitations as "private activity" bonds, and

WHEREAS, Section 103(n)(6)(B) of the Tax Reform Act of 1986 will require a detailed inquiry and study into the ways in which North Carolina can best and most

fairly manage and utilize this Resource,

NOW, THEREFORE IT IS HEREBY ORDERED:

SECTION 1. DEFINITIONS

For the purposes of this order, terms will be defined as follows:

"Code" shall mean the Internal Revenue Code of 1954, as amended.

"Committee" shall mean the Interim Private Activity Bond Allocation Committee to be formed under this order.

"Issuer" shall mean the entity authorized to issue Private Activity Bonds, except that in the case of Private Activity Bonds issued pursuant to Article 22 of Chapter 160A of the General Statutes of North Carolina, or issued solely pursuant to regulations, rules, procedures or rulings of the Internal Revenue Service of the United States, "Issuer" shall mean the municipal corporation which approved the issuance of the bonds pursuant to such regulations, rules, procedures or rulings.

"Private Activity Bonds" shall have the meaning set forth in Section 103(n)(7) of the Code and any successor provision.

"Unified Volume Limitation" shall mean the total Bond Volume Limitation measured by the formula prescribed in federal legislation.

SECTION 2.

The "Interim Private Activity Bond Allocation Committee" is hereby formed. Howard Haworth, Secretary of the Department of Commerce, Charles C. Cameron, Executive Assistant to the Governor for Budget and Management, and Harlan E. Boyles, Treasurer of the State of North Carolina, shall constitute the membership of the committee. Secretary Haworth shall serve as Chairman. Each shall serve at the pleasure of the Governor and any vacancy may be filled by his appointment. The Committee is to (1) prepare for, and lead efforts in, studying the ways in which the State can best use this valuable resource, and (2) deliver to me within 45 days after enactment of the Tax Reform Act of 1986 the summary of those studies along with a recommendation for a course of action. In conducting this study, the

Committee shall seek to indentify all of those bond issuers to be affected by such legislation. As of this date, it is believed that this group of private activity bonds and Interested Advisors to those issuers will include:

- NC Agricultural Finance Agency
- NC Association of County Commissioners
- NC Downtown Developers Association
- NC Educational Assistance Authority
- NC Health Services Division (Soil & Hazardous Waste Section)
- NC Housing Commission
- NC Housing Finance Agency
- NC Industrial Developers Association
- Eastern NC Industrial Developers Association
- Western NC Development Association
- NC League of Municipalities
- NC Local Government Commission
- NC Department of Natural & Economic Resources (Mainstreet Program)
- NC Municipal Power Agency #1
- NC Eastern Municipal Power Agency
- NC State Ports Authority
- NC Utilities Commission

The Committee shall request a statement from each issuer regarding its application for and its justification for specific volume capacity allocations for each of the years of 1986, 1987, 1988 and 1989. As part of its deliberations, the Interim Private Activity Bond Allocation Committee shall prepare estimates of year by year Bond Volume demand and submit those estimates to various interested parties, including the Lieutenant Governor and the Speaker of the House of

Representatives for comment and recommendations as to how the State of North Carolina can (1) set priorities for allocations of capacity, and (2) provide for complete utilization of the total resource. Final recommendations to the Governor from the committee shall be directed toward (a) the immediate opportunity to completely use or "set aside" remaining elements of the 1986 resource by December 15, 1986, and (b) toward the design and implementation of the long term program for dealing with the volume capacity for the years of 1987, 1988 and 1989.

SECTION 3.

So as to provide for the orderly and prompt issuance of bonds over the next several days, weeks and months, the Committee, or its designee, shall issue allocations of capacity within volume limitations and definitions set up under federal legislation and continue to issue such allocations or capacity until such time as the Governor shall issue a detailed Executive Order as regards the use of this resource. Any allocation issued to comply with Section 103(n) of the Internal Revenue Code of 1954, as amended, shall be considered an allocation made under the Tax Reform Act of 1986, and under any future Executive Order from this office.

SECTION 4.

This Executive Order shall become effective immediately.

This 23rd day of September 1986.

ADMINISTRATIVE ORDER

STATE OF NORTH CAROLINA

Office of Administrative Hearings

TO ALL TO WHOM THESE PRESENTS SHALL COME - GREETING:

I, Robert A. Melott, Reposing special trust and confidence in the integrity and knowledge of MARGARET EUGENIA ROGERS now, by virtue of the authority vested in me by law I do hereby appoint her Administrative Law Judge and confer upon her all of the rights, privileges and powers useful and necessary to the just and proper discharge of her duties.

In Witness Whereof, I have hereunto signed my name and affixed the Seal of the Office of Administrative Hearings of the State of North Carolina, at Raleigh, North Carolina, this the 15th day of September 1986.

s/Robert A. Melott
Chief Administrative Law Judge
Director

STATE OF NORTH CAROLINA

Office of Administrative Hearings

TO ALL TO WHOM THESE PRESENTS SHALL COME - GREETING:

I, Robert A. Melott, Reposing special trust and confidence in the integrity and knowledge of KENNETH WAYNE PATTERSON now, by virtue of the authority vested in me by law I do hereby appoint him Administrative Law Judge and confer upon him all of the rights, privileges and powers useful and necessary to the just and proper discharge of his duties.

In Witness Whereof, I have hereunto signed my name and affixed the Seal of the Office of Administrative Hearings of the State of North Carolina, at Raleigh, North Carolina, this the 1st day of October 1986.

s/Robert A. Melott
Chief Administrative Law Judge
Director

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Washington, D.C. 20530

WBR:SSC:YR:gmh
DJ 166-012-3
P9955
R0211-0217

September 15, 1986

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the September 2, 1986, Resolution of the North Carolina State Board of Elections which provides for the procedures for the election of the seven members of the Onslow County Board of Education in Onslow County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on September 3, 1986. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.42 and 51.48.

We note that the Resolution provides that the Executive/Director of the State Board of Elections may authorize additional changes that may be required to hold elections according to the schedule now before us. Any changes in voting adopted as a result of this provision will be subject to the preclearance requirements of Section 5. 28 C.F.R. 51.14.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:
Gerald W. Jones
Chief, Voting Section

write the Midwifery Joint
Committee, P. O. Box 2129,
Raleigh, NC 27602."

STATEMENT OF ORGANIZATION

NORTH CAROLINA BOARD OF NURSING

"The North Carolina Board of Nursing licenses registered nurses and licensed practical nurses; regulates the practice of nursing; approves educational units leading to licensure; issues interpretations of the Nursing Practice Act, and maintains a joint subcommittee with the North Carolina Board of Medical Examiners for matters relating to the performance of medical acts by registered nurses.

All meetings of the Board, including Board committee meetings, are open to the public. Persons wishing to bring matters to the Board for its attention or consideration shall submit the request in writing no less than 30 days prior to the scheduled regular meeting. The Board office is located at 706 Hillsborough Street, Raleigh, NC 27603; mailing address is P. O. Box 2129, Raleigh, NC 27602."

MIDWIFERY JOINT COMMITTEE OF THE STATE OF NORTH CAROLINA

"Midwifery Joint Committee administers the provisions of Article 10A "Practice of Midwifery" by the approval of nurses to practice midwifery in North Carolina and by regulation of that practice.

All meetings of the Midwifery Joint Committee are open to the public. Persons wishing to bring matters to the attention or consideration of the Midwifery Joint Committee may

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

The North Carolina Wildlife Resources Commission is, as a matter of executive organization, a part of the Department of Natural Resources and Community Development, but operates independently of the Department except for the management functions of coordinating and reporting.

The Commission consists of thirteen (13) members: nine of which are appointed by the Governor from the wildlife districts, two by the Governor from the State at-large, and two by the General Assembly on recommendations of the President of the Senate and the Speaker of the House, respectively.

The administrative head of the agency is its Executive Director who is selected by and serves at the pleasure of the Commission. The staff of the Commission, other than personnel serving directly under the Executive Director, is organized into five divisions as follows:

- (1) Administrative Services;
- (2) Conservation Education;
- (3) Enforcement;
- (4) Boating and Inland Fisheries; and
- (5) Wildlife Management.

The public may obtain information and make submissions and requests to the Wildlife Resources Commission by communicating with the agency by mail or in person at 512 N. Salisbury Street, Raleigh, North Carolina 27611, or by telephone at (919) 733-3391.

PROPOSED RULES

TITLE 1 - DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to adopt regulation cited as 1 NCAC 5B .0810; amend regulations cited as 1 NCAC 5A .0001 through .0004, .0009, 5B .0206, 310, through .0311; .0402, .0404, .1402, through .1403, .1506, .1509, .1510, .1512, .1513, .1601, .1603, .1903, 5D .0204, .0206, .0207, .0401, .0501, .0504, .0505; and repeal regulations cited as 1 NCAC 5B .0809, .1801, .1802, .1902, .1904, .1905, and .1908.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 143-48 through 143-60; 143-169; 143-170.1; 143B-10(f).

The public hearing will be conducted at 10:00 a.m. on November 18, 1986 at Advisory Budget Commission Conference Room, 5th Floor, Administration Building, 116 W. Jones Street, Raleigh, North Carolina 27611.

Comment Procedures: Any interested person may present his or her views and comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Betsy Watson at 733-3241.

CHAPTER 5 - PURCHASE AND CONTRACT

SUBCHAPTER 5A - DIVISION OF PURCHASE AND CONTRACT

.0001 RESPONSIBILITY

The Department of Administration is responsible for administering the state's program for the acquisition and management and disposition of personal property. The administration of this program is the responsibility of the State Purchasing Officer who reports to the Secretary of the Department of Administration.

.0002 SCOPE

The program administered by the Division of Purchase and Contract includes the following where public funds are involved:

- (1) acquisition by purchase, exchange, lease-purchase, lease or rental of equipment, materials, supplies, printing and services by all state departments, institutions, authorities, boards, commissions and agencies;
- (2) acquisition by purchase or exchange of all equipment, materials and supplies by city and county boards of education, community colleges and technical institutes;
- (3) making certain services available to charitable nonprofit hospitals, fire departments and rescue squads;
- (4) establishment and enforcement of purchase specifications;
- (5) inspection and testing of products.
- (6) transfer, exchange of sale of all surplus equipment, materials and supplies belonging to state government and under certain conditions, the exchange or sale of surplus equipment, materials and supplies by local boards of education and the sale of surplus property by community colleges and technical institutes;
- (7) supervision of inventories of agencies of state government.

.0003 ORGANIZATION

The administrative head of the Division of Purchase and Contract is the State Purchasing Officer. The division is organized into sections including for purchasing, office of administration, data processing and standards and inspection and surplus property and inventory management. The State Purchasing Officer may delegate authority to his assistants as he deems appropriate.

.0005 RULE-MAKING AUTHORITY

The basic authority for establishing rules and regulations governing the operation of the Division of Purchase and Contract is vested in the Secretary of Administration after consultation with the Advisory Budget Commission. This authority includes rules relating to the canvass of bids and award of contracts, obtaining competition on small purchases, defining contractual services, delegations of purchases, waiver of competitive

bidding, making partial or multiple awards, purchases of used goods, rejection of bids, confidentiality, making purchases jointly with other units of government, encouraging the purchase of North Carolina products and other rules and regulations as may be appropriate. Such rules may be modified or changed by majority vote of the commission and are submitted to the Attorney General for opinion as to their legal effect. Such rules and regulations shall become effective in accordance with the provisions of Chapter 150B of the General Statutes.

The Secretary of Administration is authorized to adopt rules and regulations, with approval of after consultation with the advisory Budget Commission, covering the following purposes: requiring inventory reports from state agencies; prescribing inventory procedures; prescribing the manner of inspections and tests of products before and after delivery; prescribing the manner of purchases in emergencies; prescribing the manner in which passenger vehicles shall be purchased, providing for other matters to give effect to applicable law and rules and prescribing procedures for acquiring goods from other governmental units.

The statutes, rules, procedures and practices applicable to and followed by the Division of Purchase and Contract are considered to be for the purpose of furthering the public interest. In this context, the public interest is paramount to that of any individual, agency, vendor, group or special interest. These rules and procedures are to be construed and interpreted accordingly.

.0009 BOARD OF AWARD

The Advisory Budget Commission designates two or more members to serve as a Board of Award for canvassing bids and awarding contracts and further designates certain state employees who can serve in this capacity in the absence of member(s) of the commission. recommending the award of contracts to the Secretary of Administration. The Commission further designates the following state employees who can serve in this capacity in the absence of member(s) of the Commission: Controller, State Board of Education; State Treasurer;

Secretary of State; Representative from Attorney General's Office; all departmental secretaries with the exception of the Secretary of Administration. These alternate members shall not further delegate this responsibility. The board normally meets weekly.

Bids are reviewed only by the Division of Purchase and Contract, and the Advisory Budget Commission or its designees. the Board of Award and the Secretary of Administration. Records are kept of each meeting and made public by the State Purchasing Officer. Anyone desiring to be heard before the Secretary or the State Purchasing Officer and the commission for the purpose of reviewing an award of similar decision may petition the Secretary of Administration as provided in † NCAG 1B.

SUBCHAPTER 5B - PURCHASE PROCEDURES

SECTION .0200 - SPECIFICATIONS

.0206 SUBMISSION FOR ADOPTION

Upon completion of all necessary studies, reviews and drafts, any proposed standard specification is submitted to the Standardization committee State Purchasing Officer for consideration and recommendation to the Secretary of Administration. When a specification is adopted as a standard, it becomes applicable to state purchases generally. A standard specification may be modified by the Division of Purchase and Contract on an interim basis as deemed necessary or advantageous until such time as the standardization committee Secretary of Administration can consider the proposed revision.

SECTION .0300 - ADVERTISED (FORMAL) BID PROCEDURE

.0310 ADVERTISED PROCUREMENTS

Advertised procurements are awarded under procedures established by the Secretary of Administration after consultation with the Advisory Budget Commission. Which designates two or more of its member, or non-member designees, to serve as two or more of its members, or non-member designees, to serve as a Board of Award († NCAG 5A .0009) in canvassing bids and awarding contracts. After contracts are

awarded, successful bidders are notified by letter of acceptance or by purchase order as appropriate.

.0311 GOODS REQUIRING
IMMEDIATE ACCEPTANCE

In the purchase of items which are subject to rapid price fluctuation or immediate acceptance, the State Purchasing Officer may award contracts as he deems advisable provided that each such action is made a matter of record and reported promptly to the Advisory Budget Commission Board of Award.

SECTION .0400 - INFORMAL
PROPOSALS (QUOTATION) PROCEDURE

.0402 REVIEW BY BOARD OF AWARD
AND SECRETARY OF
ADMINISTRATION

The customary review and award procedure is not a requirement in acting on proposals which do not follow the formal advertising bidding procedure (1 NCAC 5B .0300). However, any controversial matters or questions of policy which might be involved in informal purchases are reviewed for decision with the Board of Award and Secretary of Administration.

.0404 DELEGATIONS

Purchases may be made directly by all state agencies which are authorized to issue their own purchase orders and by community colleges, technical institutes and public school administrative units, up to the dollar limit authorized by the division for each agency, under the quotation procedure in Rule .0401 of this Section. Such purchases can be made by general delegation.

A general delegation is an authorization made by the Division of Purchase and Contract to an agency for the purchase of all equipment, materials and supplies not covered by state contracts and costing less than the dollar limit authorized by the division for the agency. In the case of similar and related items and groups of items, the maximum dollar limit authorized by the division applies to the total cost rather than to the cost of any single item. Requirements may not, however, be divided to bring them within this provision.

Requirements in the cost range between the maximum dollar limit authorized by the division for the agency and five thousand dollars (\$5,000) must be

referred to the Division of Purchase and Contract in one of two ways: normally, the standard requisition form and attendant procedures may be used or, alternatively, the agency may obtain competitive quotations directly from responsible sources of supply and send these to the division for its review and, if found to be in good order, approval.

Purchases by an agency of materials necessary for repairs or alterations, if to be used or furnished by that agency, should be made in the same manner as any other purchases.

SECTION .0800 - PRINTING

.0809 MULTI-COLOR PROCESS
PRINTING (REPEALED)

.0810 STATEMENT OF COST OF
PUBLIC DOCUMENTS

Every agency, when publishing a public document that is not for the principle purpose of sale to the public, shall cause a statement as to the number of copies printed, total direct reproduction cost, and the cost per copy to be placed by the agency name.

SECTION .1400 - WAIVER OF
COMPETITIVE BIDDING

.1402 DOCUMENTATION

Although competitive bidding may be waived for proper cause, its use is required wherever practicable; and further, where waiver is contemplated, except for small purchases, the reason(s) therefore must be documented, and be reviewed as in a canvass of bids, and be subject to such approval as the Advisory Budget Commission may desire.

.1403 DATA PROCESSING HARDWARE
AND SOFTWARE

If competitive bidding is waived in the acquisition of data processing hardware and software, a written explanation is required from the using agency together with written comments and advice from the Director of the Division of State Management Systems Information Processing Services and, where accounting functions are involved, the State Auditor. These expressions are given due consideration by the State Purchasing Officer for any recommendation he presents to the Board of Award and Secretary of Administration. In event agreement cannot be reached

between the using agency, the Division of Purchase and Contract and or the Board of Award, the matter is referred to the Chairman of the Advisory Budget Commission for further consideration.

SECTION .1500 - MISCELLANEOUS PROVISIONS

.1506 CONDITIONAL GRANTS: ETC. IN PUBLIC PURCHASING

Where a grant, donation or special discount is predicated upon making a purchase from the grantor, the proposed transaction is fully documented and is to have prior approval of the Advisory Budget Commission Secretary of Administration.

.1509 PURCHASING FROM OR THROUGH STATE EMPLOYEES

Every reasonable effort is made to avoid making purchases from or through employees of state government or any of its agencies or of public school administrative units. Any instances which may develop of doing business with such personnel are reported to the Advisory Budget Commission Secretary of Administration for action as it deems deemed appropriate.

.1510 USE OF STATE PURCHASING POWER FOR PRIVATE GAIN

The purchasing power of the state is not to be used for private advantage or gain. Purchases under contracts made by the state, except those in accordance with G.S. 143-58.1, are not to be allowed for personal use out of private funds nor are agencies or institutions to place orders for articles for ownership by employees or other individuals.

.1512 AVAILABILITY OF SERVICES TO CERTAIN NON-STATE AGENCIES

The Division of Purchase and Contract makes purchasing services available to charitable nonprofit hospitals, local nonprofit community sheltered workshops, political subdivisions, volunteer fire departments and rescue squads. Such services are limited to the expenditure of public funds and are rendered under rules and regulations adopted by the Advisory Budget Commission. Services to volunteer fire departments and rescue squads concern only gasoline, oil and tires.

Advisory Budget Commission rules provide that the services be made available in a gradual, orderly and effective manner. Necessarily, this is affected by budgetary allowances for personnel, time and related costs.

The division inquires periodically among hospitals and political subdivisions of the state to determine the types of items available from state term contracts for which they would want the division to contract for them. Based on this information, the division develops and implementing schedule of items together with the times for handling them and the methods of purchasing or contracting. The division has final decision as to items included on the schedule.

Any hospital or subdivision may elect individually to participate in the purchase of any particular items or groups of items provided in the schedule in the following manner: for indefinite quantity contracts, by requesting the division prior to the invitation for bids to include its requirements in the next invitation; and, when definite quantity purchases are handled, by requisitioning in the same manner as state agencies.

Where a hospital or subdivision elects to participate in a contract or purchase, its resulting contractual duties, obligations and responsibilities are the same as those required for state agencies and institutions.

Hospitals and subdivisions shall make payments to suppliers in a timely manner and in accordance with the terms of the contracts and, for data and statistical purposes, shall furnish the division a copy of each order or release issued under such contracts.

As may be practicable in terms of personnel, time and costs, the division may offer its services, in addition to purchasing and contracting, to hospitals and subdivisions with respect to preparation of specifications, contracts for services, inspection and testing of products, expediting deliveries and advising as to market conditions.

.1513 COOPERATIVE PURCHASING

Where an agency of the state or school administrative unit is a participant in an authorized cooperative project with another

governmental activity or with a charitable non-profit corporation, goods and services necessary to the project shall be acquired according to the state's customary procedures; provided, however, that if the interest of the state would be served by making acquisition on behalf of such governmental activity or corporation, or by authorizing acquisition on the state's behalf under the provision of Article 8 of Chapter 143 of the General Statutes, the State Purchasing Officer may do so with prior approval of the Advisory Budget Commission Secretary of Administration.

SECTION .1600 - EXEMPTIONS: EMERGENCIES AND DELEGATIONS

.1601 EXEMPTIONS

Unless directed otherwise by the Secretary of Administration, with approval of after consultation with the Advisory Budget Commission, it is not mandatory that published books, manuscripts and like material and perishable articles such as fresh meats be purchased through the Division of Purchase and Contract. Where such purchases are made directly by using agencies, however, competitive bids are required wherever possible.

The Secretary of Administration and the Advisory Budget Commission have directed that contracts for two such types of foods, bakery products and dairy products, be awarded through the Division of Purchase and Contract.

The printing of Supreme Court reports is exempted from handling through the Division of Purchase and Contract.

The purchase of liquor is not handled through the Division of Purchase and Contract.

.1603 DELEGATIONS

The State Purchasing Officer may authorize any state agency, community college, technical institute or local board of education to purchase directly such supplies, materials, equipment or services as he may designate, provided that:

- (1) Where available, items or their functional equivalents are obtained in accordance with established state contracts;
- (2) Items which are purchased by schedule are consolidated and forwarded to the division according to the established

dates and schedules (monthly, quarterly, etc.);

- (3) Agency quotation forms, general conditions of purchase and purchase order forms are subject to approval by the division;
- (4) No indefinite quantity contracts or price agreements are entered into without specific prior approval by the division;
- (5) Copies of all agency purchase orders or like information are forwarded as requested to the division, giving the basis for the purchase (state contract, local quotation, etc.);
- (6) In all cases, applicable legal requirements and good purchasing practices are followed, including obtaining reasonable and adequate competition where available with quotation made a matter of record.

In such cases, public advertisement is not required unless made a condition of the authorization. Every such authorization is in writing, made a matter of record and subject to approval of the Advisory Budget Commission Secretary of Administration. Such delegation cannot be contrary to the intent of any existing contract for the same or similar goods or services. Further, while not limited as to expenditure, such delegation is confined to items and quantities which, by their nature or circumstance such as perishableness, transportation costs, local conditions or local availability, would result in handling by the Division of Purchase and Contract serving no practical purpose.

The Division of Purchase and Contract, in its discretion, may require that proposals received under such delegations be sent to it for determination of the successful bidder.

Approval of purchases by public school administrative units as provided under General Statute 115-522 is based upon purchases being made in accordance with the provisions of Article 3 of Chapter 143.

The Division of Purchase and Contract periodically reviews its delegations of purchase to ascertain the availability of these supplies, materials, equipment or services and their continued suitability for delegation.

SECTION .1800 - INVENTORIES
AND STORES

.1801 SUPERVISION (REPEALED)

.1802 PERSONAL PROPERTY
INVENTORY PLAN (REPEALED)

SECTION .1900 - RECORDS OF
THE DIVISION OF PURCHASE
AND CONTRACT

.1902 REQUISITIONS (REPEAL)

.1904 REQUEST FOR QUOTATIONS
(REPEAL)

.1905 GENERAL CORRESPONDENCE
(REPEAL)

.1908 PURCHASE ORDERS (REPEAL)

~~1903~~ BID FILES

Each advertised invitation for bids is uniquely numbered and filed with bid responses and related information in a jacket. The file includes requisition, worksheet, mailing list, bid responses, tabulation or abstract (where prepared), related correspondence and, as applicable, a copy of the certification of award to the successful bidder(s). Except for any information subject to the rule on confidentiality, the file is open to interested persons. Subject to the provision of ~~1~~ NCAC 5B ~~1501~~, copies of material in bids are available, and any information needed may be hand copied by interested persons. Upon request, the division shall supply interested persons with copies of such material, following payment of reasonable costs of providing the materials. Bids are kept on file at the division during the current year. Thereafter, they are available from the state records center for a period of four years. Bid files are available upon request during office hours.

.1903 FILES

Each requisition received by the Division of Purchase and Contract is assigned a unique, sequential control number and is placed in a prenumbered folder. This number then becomes the bid or quote number and the purchase order number, if one is issued by the division.

All documents related to the bid or quote or purchase order will be filed in the pre-numbered folder. The file includes the requisition, worksheet, mailing lists, bid

responses, tabulation, related correspondence, and the certification of award to the successful bidder, as well as the purchase order, if one is issued by Purchase and Contract. Certain information may be classified as confidential under 1 NCAC 5B .0309 during the period of evaluation, and under 1 NCAC 5B .1501 as the State Purchasing Officer may determine. All other material in the file is open to interested persons during normal office hours, may be hand copied, or copies will be furnished following payment of reasonable costs.

The files are kept on file at the Division of Purchase and Contract for a period of one year. Thereafter, they are available from the State Records Center for a period of four years.

SUBCHAPTER 5D - CONSULTANTS AND
CONTRACTUAL SERVICES

SECTION .0200 - CONTRACTING
PROCEDURE FOR CONSULTANTS

.0204 REVIEW OF AGENCY
REQUESTS

The documents submitted by agencies requesting authority to retain consultants will be reviewed by the Division of Purchase and Contract. Upon completion of this review the requesting agency will be advised, subject to such conditions as may be prescribed by the Governor or his designee, to:

- (1) canvas additional sources within state government; or
- (2) solicit proposals from private contractors, state agencies or both; or
- (3) execute a negotiated contracts(s) without competitive proposals if the Division of Purchase and Contract and the Governor have determined that performance or price competition is not available or that the requirement is for an authorized cooperative project with another governmental unit(s) or a public or private nonprofit organization(s) or that the contract price is too small to justify soliciting competitive proposals; or
- (4) abandon the project for being outside the scope of the agency's responsibilities or for having insufficient benefit to the state relative

to the potential expenditure of funds.

.0206 NEGOTIATED CONSULTANT CONTRACTS

An agency which receives authorization to enter into a negotiated contract(s) for consultant services without soliciting competitive proposals shall submit the proposed contract(s) to the Division of Purchase and Contract for review and approval prior to execution. Upon completion of this review the requesting agency shall be notified in writing by the Governor or his designee that an approved contract(s) may be executed by the agency head.

.0207 CONSULTANT CONTRACT MODIFICATION

Any modification to any an approved contract(s) shall be subject to the same approval requirements as the original contract(s). The Governor or his designee may at his option, during the process or reviewing requests for contract modifications, waive any of the provisions of Rule .0203 of this Section.

SECTION .0400 - CONTRACTING PROCEDURE

.0401 GENERAL POLICY STATEMENT

It shall be general policy to acquire contractual services service contracts by seeking competition. The final decision-making authority in regard to any phase of procurement or performance of any contractual service service contract is, and shall remain, the State Purchasing Officer or the Advisory Budget Commission Secretary of Administration. Such authority may be delegated to such agencies or individuals as they may designate but the right is reserved to retract such authority at any time as either or both may deem it to be in the best interest of the state. Any contract entered into in the name of the state and paid for by state funds by a state agency, or any state employee, or any member of a board or commission, which is contrary to an applicable rule, regulation or these procedures shall be void and of no effect.

SECTION .0500 - COMPETITIVE PROCEDURES

.0501 GENERAL REQUIREMENTS

After preparation of

justification and a task description, the agency shall solicit quotations, ~~bids~~ or proposals, from as many sources as possible. In order to get a better idea of the market, the agency should develop and maintain an "active bidder's mailing list" for each type of service. Such bidder's list may be compiled from previous knowledge, trade journals, lists prepared by other state agencies including the purchase and contract division, Division of Purchase and Contract, telephone directories, requests by vendors, etc.

Each contractor contacted shall be given a copy of the task description (or it should be read to him for phone quotes), as well as any other information necessary for him to prepare his quotation or proposal. Each All contractors should shall be given the same information given to all other contractors, in order that no one is given preferential treatment, whether intentional or not.

After all quotes or proposals are received, the agency shall tabulate the results. Each contractor's offer should be carefully analyzed to ascertain compliance with the task description, terms and conditions. Before the award of the contract, the agency should make a termination through financial statements, references, etc., that the recommended contractor is capable of performing the work in a satisfactory manner.

The agency should prepare the proposed contract, or agreement, incorporating the task description therein. All terms and conditions should be such that the state's best interests are protected.

.0504 SERVICES COSTING OVER FIVE THOUSAND DOLLARS

The procedure for request for proposals (RFP) and recommendation for their award will be the same as the procedures in 1 NCAC 5D .0503 with the following additions after approval by the executive officer or his/her representative: the justification memo, the request for proposals, a copy of all proposals received, the proposed contract, and the requesting agency's recommendation for award shall be submitted to the Purchase and Contract Division for its review. After the

contractual service section makes its recommendation, all required supporting data will be submitted to the State Purchasing Officer for final determination of the successful bidder and award of the contract. Appeals of such decisions may be made to the Board of Awards.

.0505 SINGLE SOURCE SERVICES

All agencies of the state shall make every effort to eliminate "sole source contracts" whenever possible. Competition is the best means available to assure that the state receives the best service at the lowest possible cost. Whenever contracting with a sole source is inevitable, the agency shall obtain approval from the Division of Purchase and Contract to negotiate the contract with the vendor. Such contract(s) shall include a break down by the vendor itemizing the components of the proposed cost.

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to amend and adopt regulations cited as 1 NCAC 35 .0101; .0103; .0202; .0301; .0302; .0303; .0403; .0404 and .0407.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 143 B-10; 147-62.

The public hearing will be conducted at 9:00 a.m. on November 20, 1986 at Advisory Budget Commission Conference Room, Fifth Floor, Administration Building, 116 W. Jones Street, Raleigh, NC 27611.

Comment Procedures: Any interested person may present his or her views and comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Fran Tomlin, Department of Administration, 116 W. Jones St., Raleigh, NC 27611, (919) 733-7232.

CHAPTER 35 - STATE EMPLOYEES COMBINED CAMPAIGN

SECTION .0100 PURPOSE AND ORGANIZATION

.0101 PURPOSE

The purpose of the State Employees combined Campaign is to allow state employees the opportunity to contribute to charitable non-partisan organizations in an orderly and uniform process. The contributions are in turn granted to those charities selected by the S.E.C.C. Advisory Committee.

These regulations apply only to those campaigns in which employee's are asked to make charitable donations using payroll deductions as the method of payment.

.0103 ORGANIZATION OF THE CAMPAIGN

The Campaign Organization is as follows:

(1) Chair. Each year the governor will appoint a State Combined Campaign director from one of the Executive Cabinet or University Administration agencies. The director or the director's designee will serve as chair of the campaign. The responsibilities of the chair include setting the dates and approving the published materials for the Combined Campaign, and serving as chair of the S.E.C.C. advisory committee.

(2) Statewide Combined Campaign Advisory Committee. This ongoing committee serves as a central application point for all charitable organizations that wish applying to participate in the S.E.C.C. and shall determine if the applicant agencies meet the approved criteria listed in Rule .0202 of this Chapter. The committee recommends overall policy for the campaign to the Office of Budget and Management Governor, the Campaign Director and necessary State agencies. The Committee is composed of ten members appointed by the Chair. members of the committee will initially serve staggered terms of one (1), two (2), and three (3) calendar years. A random drawing of 1986 committee member's names shall determine terms of membership. As each member's term expires, the replacement member will serve

a three calendar year appointment.

- (3) Local Campaign Chair. The Governor, if asked by the local charitable organizations accepted in to the Combined Campaign, will appoint a representative of either state government or the University in the area to serve as the local chair. This person will be responsible for forming a local advisory committee if needed for volunteer recruitment of state employees, campaign literature approval, and the establishment of local goals as needed and distribution of undesignated funds.

- (4) Master Account. Serves as the financial administrator for the Combined Campaign, and as such is responsible for receiving reports from the local Combined Campaigns; for transmitting to each local campaign its share of the state employees payroll deduction funds; and for preparing an end of campaign report which summarizes all fiscal campaign activity including local audits. The master account is also responsible for the printing and distribution of the pledge form, campaign report form, and collection envelopes.

- (5) Local Campaign Manager. Once applications for acceptance into the campaign have been approved, a list of all accepted organizations will be prepared by the Statewide Combined Campaign Advisory Committee and distributed to all applicants. The organizations will decide among themselves which agency will serve as the local campaign manager. For the purpose of deciding on the manager, the accepted agencies will be divided into three groups, each of which will have one vote. The groups will be:

- (a) United Way;
- (b) National Health; and
- (c) Independent Agencies.

The local campaign manager is responsible for the printing and distribution of campaign literature, the collection of pledge reports and envelopes from the state agency volunteers, the development of campaign reports, and the forwarding of one copy of each

payroll deduction pledge to the master account. In addition, and end-of-campaign report shall be sent to the master account for inclusion in the required fiscal reports.

Note: A contract between the state and the local manager will be executed in order to develop an acceptable audit trail. The contract will allow a reasonable charge for campaign expenses to be claimed by the local manager. This amount will be approved by the state.

SECTION .0200 ELIGIBLE ORGANIZATIONS

.0202 CRITERIA FOR ACCEPTANCE. Organizations must meet the following criteria to be accepted as participants in the Combined Campaign:

- (1) The organization must be licensed to solicit funds in North Carolina.
- (2) Must be directed by an active Board of Directors, which meets regularly and whose members serve without compensation.
- (3) Have a 501C(3) tax exempt status for both the IRS and N. C. tax purposes.
- (4) Must prepare and make available to the general public an annual financial report, which is certified by an independent public accountant.
- (5) If fundraising and administrative expenses are in excess of 25 percent of total revenue, must demonstrate to the satisfaction of the S.E.C.C. that those expenses for this purpose are reasonable under all the circumstances of the case.
- (6) Must certify that all publicity and promotional activities are truthful and non-deceptive.
- (7) Must agree to the confidentiality of the contributor list, and must promise no unauthorized use of this list.
- (8) Must permit no payments of commission, kickbacks, finders fees, percentages, bonuses, or overrides for fundraising, and permit no paid solicitations of the public.
- (9) Must have a policy of non-discrimination on the basis of race, color, religion, sex, age, national origin or physical or mental handicap for clients of the agency, employees of the

agency and members of the governing board. Agencies which have been organized along religious lines, or which are organized to serve persons of a particular sex or race may be considered for eligibility if a bona fide purpose for organizing along such lines can be shown.

(+0) Must provide benefits or services within the local community, meaning that employees in the solicitation area or their families should be able to receive services from the agency within a reasonable distance, or receive benefits from voluntary agencies. Examples of services are:

- (a) research and education in the health and welfare or education fields;
- (b) family and child care services;
- (c) protective services for children and adults;
- (d) services for children and adults in foster care;
- (e) services related to the management and maintenance of the home;
- (f) day care services for adults and children;
- (g) transportation services, information referral and counseling services;
- (h) the preparation and delivery of meals;
- (i) adoption services;
- (j) emergency shelter care and relief services;
- (k) safety services;
- (l) neighborhood and community organization services;
- (m) recreation services;
- (n) social adjustment and rehabilitation services;
- (o) health support services; or
- (p) a combination of services designed to meet the needs of special groups such as the elderly or handicapped.

However, an international organization which provides health and welfare services overseas, whose activities do not require a local presence and which meet other eligibility criteria, may be accepted for participation in the campaign.

Eligibility for participation in the campaign shall be limited to non-partisan, non-profit charitable organizations providing traditional health, welfare or educational services to state employees or their families within the statewide solicitation area. Such services must directly benefit

State employees or their families. The services must consist of care, research or education in the fields of human health, social adjustment, or rehabilitation. Additional services may include relief during times of natural disasters or other emergencies as well as assistance to the needy in the form of food, clothing and shelter.

As previously set forth, an organization selected by the S.E.C.C. Advisory Committee as a participant in the Combined Campaign must meet the Acceptance Criteria. In addition to the specified criteria, the S.E.C.C. Advisory Committee possesses the authority to consider additional related factors. Such factors given consideration by the Committee include but are not limited to present need, duplication of existing services provided to state employees by the State of North Carolina, programs, goals and initiatives of State government and the necessity to limit participation of organizations to a reasonable and manageable number.

SECTION .0300 APPLICATION PROCESS AND SCHEDULE

.0301 SCHEDULE

Complete applications must be submitted to the State Campaign Committee by March 1 to be included in the fall campaign. Incomplete applications will not be considered by the Committee.

.0302 RESPONSE

All applicants will be notified of their acceptance or rejection with 30 days from receipt of the completed application by the committee. Rejections may shall be appealed to the campaign director within 30 days of receipt of the notice of rejection - but An appeal will not be allowed to delay the start of the campaign.

.0303 FORM AND CONTENT OF APPLICATION

All organizations seeking funding must submit an application to the state campaign. The application must include:

- (1) A letter from the board of directors indicating interest.
- (2) A complete description of services provided, and the service area of the organization.

- (3) A The most recent financial statement for the previous year, including the most recent audit.
- (4) A board statement of assurance of non-discrimination.
- (5) A description of the origin, purpose and structure of the organization.
- (6) A list of the current members of the board, including addresses.
- (7) A letter certifying compliance with the eligibility standards listed in Rule .0202 of this Chapter including tax exempt status, licensing, and showing the percentage of funds used for administrative and fundraising purposes and the percent expended for services to the public.

SECTION .0400 - GENERAL PROVISIONS

.0403 PAYROLL DEDUCTION

If an employee chooses to use the payroll deduction method of contributing, they he/she must agree to having the deduction continue for one year with equal amounts being taken from each check (monthly or biweekly depending on the payroll). All deductions will start with the January payroll and continue through December. If the employee discontinues employment, or actively chooses to discontinue payment, the state will not be responsible for the collection of the unpaid pledge. No deduction will be made for any period in which the employee's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustments will be made in subsequent periods to make up for deductions missed.

.0404 CAMPAIGN LITERATURE

Each charitable organization accepted as a part fo the campaign, must provide adequate information about its services provided to the local campaign manager for use in the local campaign.

.0407 EFFECTIVE DATE OF AMENDED RULES

These amended rules shall become effective on February 1, 1987 or when filed with the Director of the Office of Administrative Hearings whichever occurs last and shall apply to all applications then pending or thereafter approved.

TITLE 10 - HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Medical Care Commission intends to repeal regulations cited as 10 NCAC 3N .0100; .200; .0300; .0400; and .0500.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 131A.

The public hearing will be conducted at 9:30 a.m. on December 12, 1986 at Room 201, Division of Facility Services, 701 Barbour Drive, Raleigh, N.C. 27603.

Comment Procedures: Written comments should be submitted to Mr. I. O. Wilkerson, Jr., Secretary, Medical Care Commission, 701 Barbour Drive, Raleigh, N.C. 27603. These comments will be received from the date of publication until December 11, 1986.

SUBCHAPTER 3N - GUIDELINES HEALTH CARE FACILITIES FINANCE ACT

SECTION .0100 - DEFINITIONS

- .0101 PATIENT BED (REPEALED)
- .0102 EQUIPMENT (REPEALED)
- .0103 BUILT-IN EQUIPMENT (REPEALED)
- .0104 DESIGNER (REPEALED)
- .0105 DIVISION (REPEALED)
- .0106 LEASE, LESSEE (REPEALED)

SECTION .0200 - APPLICATIONS

- .0201 ELIGIBLE APPLICANTS (REPEALED)
- .0202 ELIGIBLE PROJECTS AND ALLOWABLE COSTS (REPEALED)
- .0203 REIMBURSEMENT OF ALLOWABLE COSTS (REPEALED)

SECTION .0300 PROJECT DEVELOPMENT

- .0301 CONFERENCE (REPEALED)
- .0302 SELECTION OF ARCHITECT OR ENGINEER (REPEALED)
- .0303 LONG-RANGE PLAN AND AREA-WIDE PLANNING (REPEALED)
- .0304 NARRATIVE PROGRAM (REPEALED)
- .0305 SCHEMATIC PLANS (REPEALED)
- .0306 PRELIMINARY FEASIBILITY STUDY (REPEALED)
- .0307 APPLICATION (REPEALED)

- .0308 COMMISSION APPROVAL
(REPEALED)
- .0309 FINANCIAL FEASIBILITY
STUDY (REPEALED)
- .0310 PRELIMINARY WORKING
DRAWINGS (REPEALED)
- .0311 FINAL WORKING
DRAWINGS (REPEALED)
- .0312 PREPARATION OF BOND
DOCUMENTS (REPEALED)
- .0313 OPENING OF BIDS
(REPEALED)
- .0314 SALE OF BONDS (REPEALED)
- .0315 AWARD OF CONTRACTS
(REPEALED)
- .0316 EQUIPMENT LIST
(REPEALED)
- .0317 CONSTRUCTION PHASE
ACTIVITIES (REPEALED)
- .0318 OCCUPANCY (REPEALED)
- .0319 AUDITS (REPEALED)
- .0320 TRANSFER OF TITLE
(REPEALED)
- .0321 GENERAL STANDARDS OF
DESIGN AND CONSTRUCTION
(REPEALED)

SECTION .0400 STANDARDS OF
OPERATION AND MAINTENANCE

- .0401 LICENSURE (REPEALED)
- .0402 CONTROL (REPEALED)
- .0403 ORGANIZATION (REPEALED)
- .0404 MAINTENANCE (REPEALED)

SECTION .0500 EQUIPMENT
ACQUISITION PROJECTS

- .0501 ELIGIBLE APPLICANTS
(REPEALED)
- .0502 ELIGIBLE PROJECTS AND
ALLOWABLE COSTS
(REPEALED)
- .0503 REIMBURSEMENT OF
ALLOWABLE COSTS
(REPEALED)
- .0504 CONFERENCE (REPEALED)
- .0505 SELECTION OF ARCHITECT
OR ENGINEER (REPEALED)
- .0506 NARRATIVE PROGRAM
(REPEALED)
- .0507 SCHEMATIC PLANS
(REPEALED)
- .0508 APPLICATION (REPEALED)
- .0509 COMMISSION APPROVAL
(REPEALED)
- .0510 FINANCIAL FEASIBILITY
(REPEALED)
- .0511 PRELIMINARY WORKING
DRAWINGS (REPEALED)
- .0512 FINAL WORKING DRAWINGS
(REPEALED)
- .0513 PREPARATION OF NOTE
DOCUMENTS (REPEALED)
- .0514 OPENING OF BIDS
(REPEALED)
- .0515 SALE OF NOTES (REPEALED)
- .0516 AWARD OF CONTRACTS AND/
OR PURCHASE ORDERS
(REPEALED)
- .0517 EQUIPMENT LIST
(REPEALED)
- .0518 CONSTRUCTION PHASE
ACTIVITIES (REPEALED)

- .0519 OCCUPANCY (REPEALED)
- .0520 AUDITS (REPEALED)
- .0521 TRANSFER OF TITLE
(REPEALED)
- .0522 LICENSURE (REPEALED)
- .0523 ORGANIZATION (REPEALED)
- .0524 MAINTENANCE (REPEALED)

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to adopt, amend, repeal regulations cited as 10 NCAC 4B .0101 through .0106; .0108; .0109 and .0201 through .0208; 10 NCAC 4C .0304; .0305; 7B .0205; .0211; .0212; .0354; 8A .0312; 8B .0312 and .0313; .0501 through .0505; .0607; .0609; .0611; and .0613 through .0615; 8D .0308; .0506; .0516; .0704; .0706; 8F .0111; 8G .0712; 8J .0908; 10A .0316; .0318; .0485; .0527; .1031; .1033; .1136; .1138; .1213; and .1214; .1955; .1965; .2115; .2221; .2307; .2308; .2417; 10B .0100 through .0400 and .0800 through .1307; and 10C .0509; .0514; .0703; .0705; 10D .0801; .0802; .1102; .1209; .1306; .1312 through .1314; .1625; .1631 and .2603; 10F .0002; .0029; .0030; .0032 through .0034 and .0041.

The proposed effective date of this action is January 1, 1987 and February 1, 1987.

Statutory Authority: G.S. 20-139.1(b); 90A-29; 130A-4(b); 130A-5(3); 130A-124; 130A-127; 130A-177; 130A-205; 130A-220; 130A-228; 130A-230; 130A-236; 130A-239; 130A-248; 130A-250; 130A-275; 130A-294(a)(3); 130A-294(a)(7); 130A-294(c); 130A-315; 130A-317; 130A-318; 130A-320; 130A-335(e); 131E-56; 143B-10; 143B-142; 143B-193; 150B-11; 150B-12; 150B-16; 150B-17; 150B-23; P.L. 93-523; 40 C.F.R. 141; 1985 S.L., c. 697, s. 3.

The public hearing will be conducted at 1:30 p.m. on November 14, 1986 at Highway Building, Auditorium (First Floor), 1 South Wilmington Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rules by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3131. Written comments on these subjects may be sent to Mr.

Barkley at the above address. Written and oral (for no more than ten minutes) comments on these subjects may be presented at the hearing. Notice should be given to Mr. Barkley at least three days prior to the hearing if you desire to speak.

CHAPTER 4 - HEALTH: OFFICE OF THE DIRECTOR

SUBCHAPTER 4B - PROCEDURAL RULES

SECTION .0100 - PROCEDURES: HEALTH SERVICES COMMISSION

.0101 PETITIONS

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission for Health Services or the Division of Health Services shall make his request in a petition addressed to: Office of Administrative Procedures, State Health Director, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602.

(b) The petition shall contain the following information:

- (1) either a draft of the proposed rule or a summary of its contents;
- (2) the statutory authority for the agency to promulgate adopt the rule;
- (3) the reasons for the proposal;
- (4) the effect of the proposed rule change on existing rules or orders and statutes;
- (5) any data supporting the proposal;
- (6) the effect of the proposed rule on existing practices in the area involved, including cost factors;
- (7) the names and addresses, if known, of those most likely to be effected by the proposed rules; and
- (8) the name and address of the petitioner.

(c) The Commission for Health Services or its designee the State Health Director shall determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. The Commission for Health Services or its designee the State Health Director shall consider all the contents of the submitted petition, plus any additional information it deems relevant.

(d) Within 30 days of submission of the petition the time period prescribed by G.S.

150B-16, the Commission for Health Services or its designee the State Health Director, each within their designated authorities, shall render a decision to deny the petition or to initiate rule making proceedings. If the decision is to deny the petition, the Commission for Health Services or its designee the State Health Director shall notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Commission for Health Services or its designee Division of Health Services shall initiate a rule-making proceedings by issuing a rule making notice, as provided in these rules.

.0102 NOTICE (REPEALED)

.0103 HEARING OFFICER (REPEALED)

.0104 HEARINGS

(a) Upon a determination to hold a rule-making proceeding, either in response to a petition or otherwise, the Division of Health Services shall give notice of a public hearing on the proposed rule in accordance G.S. 150B-12.

(b) Any person desiring information in addition to that provided in a particular rule making notice may contact: Office of Legal Assistance, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602.

(c) Any person desiring to present data, views, or arguments orally on the proposed rule must, at least three days before the hearing, file a request with: Office of Administrative Procedures, Legal Assistance, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602. This requirement may be waived, or a failure to file a request may be excused, in the discretion of the presiding hearing officer. Any person permitted to make an oral presentation is encouraged to submit a written copy of the presentation to the hearing officer prior to the hearing, or to the hearing officer at the hearing.

(d) A request to make an oral presentation must contain a brief summary of the requesting person's views with respect to the subject matter, and a statement of the length of time the person intends to speak.

Presentations may not exceed 10 minutes unless, upon request made either before or at the hearing, the hearing officer grants an extension of time for good cause.

(c) The office of administrative procedures shall promptly acknowledge receipt of a request to make an oral presentation and shall inform the requesting person of any limitations deemed necessary to the end of a full and effective public hearing on the proposed rule.

(d) (e) Any person may file a written submission containing data, comments, or arguments after publication of a rule-making notice up to and including the day of the hearing, unless a longer period is stated in the particular notice or an extension of time is granted for good cause. A submission must clearly state the rule or proposed rule to which the comments are addressed and must also include the name and address of the person submitting it. Written submissions must be sent to: Office of Administrative Procedures Legal Assistance, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602. The office will promptly acknowledge receipt of all written submissions.

(f) The presiding officer at the hearing shall have complete control over the proceedings public hearing, including:

- (1) the responsibility of having a record made of the proceedings,
- (2) extension of any time allotments,
- (3) recognition of speakers,
- (4) prevention of repetitious presentations, and
- (5) general management of the hearing.

The presiding hearing officer shall assure that each person at the hearing is given a fair opportunity to present views, data, and comments.

.0105 STATEMENT OF REASONS FOR AND AGAINST RULE MAKING DECISION

(a) Any interested person who desires from the Commission for Health Services or the state health director a concise written statement of the principal reasons for and against the decision by the Commission for Health Services or the State Health Director to adopt or reject a rule may,

either prior to the decision or within 30 days thereafter, submit a written request to: Office of Administrative Procedures Legal Assistance, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602.

(b) An "interested person" shall be defined as any person, as defined in G.S. 150A-2(7), whose rights, duties, or privileges might be affected by the adoption of the rule.

(c) The request must be made in writing, must contain a statement showing that the requesting person is an interested person, and must identify the rule or proposed rule involved.

(d) The Commission for Health Services shall issue the statement of reasons for and against its decision within 45 days after receipt of the request.

.0106 RECORD OF RULE MAKING PROCEEDINGS (REPEALED)

.0108 DECLARATORY RULINGS

(a) The State Health Director of the Division of Health Services shall in accordance with G.S. 150B-17 issue have the power to make a declaratory rulings concerning rules found in 10 NCAC 4-13, where the issue is whether a rule is applicable or whether a rule he or his designee has made is valid. The Commission for Health Services shall have the power to make a declaratory ruling where the issue is whether a rule made by the Commission for Health Services or its designee is valid.

(b) All requests for declaratory rulings shall be by written petition and shall be submitted to: Office of Administrative Procedures State Health Director, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602.

(c) Every request for a declaratory ruling must include the following information:

- (1) the name and address of the petitioner,
- (2) the statute or rule to which the petition relates,
- (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him, and
- (4) the consequences of a failure to issue a declaratory ruling.

(d) Whenever the person or

body that has the power to make a declaratory ruling State Health Director believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to issue one. When good cause is deemed to exist, the person or body that has the power to make a declaratory ruling State Health Director shall notify in writing the petitioner and the hearing officer of his decision, stating reasons for the denial of a declaratory ruling. The person or body that has the power to make a declaratory ruling may refuse to consider the validity of a rule State Health Director must consider the validity of a rule under the following circumstances:

- (1) unless the petitioner shows that the circumstances are so changed since adoption of the rule that such a ruling would be warranted;
- (2) unless the rule making record evidences a failure by the agency to consider specified relevant factors;
- (3) if there has been a similar controlling factual determination in a contested case, or if the factual context being raised for a declaratory ruling was specifically considered upon adoption of the rule being questioned as evidenced by the rule making record; or
- (4) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.

(e) Where a declaratory ruling is deemed appropriate, the person or body that has the power to make a declaratory ruling shall issue the ruling within 60 days of the receipt of the petition.

(f) (c) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be deemed appropriate, in the discretion of the person or body that has the power to make a declaratory ruling State Health Director, in the particular case.

(g) (f) The person or body that has the power to make a declaratory ruling State Health Director may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

(h) A record of all declaratory ruling proceedings shall be maintained by the Office of Administrative Procedures and shall be available for public inspection during regular business hours. This record shall contain:

- (1) the original request;
- (2) the reasons for refusing to issue a ruling;
- (3) all written memoranda and information submitted;
- (4) any record of an oral hearing; and
- (5) a statement of the ruling.

.0109 CONTESTED CASE HEARINGS

All contested cases arising under the rules in Chapters 4-13 whether adopted by the Commission for Health Services or by the Secretary of the Department of Human Resources or his/her delegated agent, (except those contested cases dealing with licensure of skilled nursing homes) shall be heard by one or more hearing officers appointed by the Secretary of the Department of Human Resources or by his/her delegated agent. Such contested case hearings shall be heard in accordance with rules found in 10 NCAC 4B- Appeals concerning the interpretation and enforcement of the rules in 10 NCAC 4-13 shall be made in accordance with G.S. 150B. The final decision in contested cases arising under the rules in 10 NCAC 4-13 shall be made by the State Health Director.

SECTION .0200 - RULE MAKING: DIRECTOR

- .0201 PETITIONS (REPEALED)
- .0202 NOTICE (REPEALED)
- .0203 HEARING OFFICER (REPEALED)
- .0204 HEARINGS (REPEALED)
- .0205 JUSTIFICATION OF RULE MAKING DECISION (REPEALED)
- .0206 RECORD OF RULE MAKING PROCEEDINGS (REPEALED)
- .0207 FEES (REPEALED)
- .0208 DECLARATORY RULINGS (REPEALED)

SUBCHAPTER 4C - PAYMENT PROGRAMS

SECTION .0300 - ELIGIBILITY DETERMINATIONS

.0304 APPEALS PROCEDURE
CONCERNING ELIGIBILITY
(REPEALED)

.0305 APPEALS PROCEDURE
Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

CHAPTER 7 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 7B - HIGHWAY SAFETY

SECTION .0200 - BLOOD ALCOHOL
TEST REGULATIONS

.0205 DENIAL OF PERMIT
(REPEALED)

.0211 REVOCATION OF PERMIT
(a) If the director receives unfavorable information concerning the character or ability of any blood analyst, he shall direct an investigation to be made. If the director becomes satisfied that the unfavorable information is accurate, and that the blood analyst would for this reason no longer be eligible to be granted an initial or renewal permit, he shall suspend or revoke the permit in accordance with G.S. 130A-23.

(b) The director shall send a notice of revocation to the blood analyst by registered mail, and the permit in the possession of the blood analyst shall be revoked at midnight or the day the notice of revocation was mailed and shall be immediately surrendered upon receipt of notice of revocation.

(c) Any blood analyst whose permit has been revoked may appeal such action. All requests for appeal shall be by written petition and shall be submitted to: Director, Division of Health Services, P.O. Box 2091, Raleigh, N.C. 27602. All appeals shall be conducted in accordance with G.S. 150A, 10 NCAC 4B, and with 10 NCAC 1B.

.0212 APPEALS PROCEDURE
Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .0300 - BREATH ALCOHOL
TEST REGULATIONS

.0354 REPORTING OF ALCOHOL
CONCENTRATIONS BY BREATH
ANALYSTS

(a) When performing chemical analyses of breath under the authority of G.S. 20-139.1 and the provisions of these Rules, a report by a breath analyst of a breath-test reading of 0.10 percent by weight of alcohol in a person's blood shall be deemed as reporting 0.10 alcohol concentration.

(b) When performing chemical analyses of breath under the authority of G.S. 20-139.1 and the provisions of these Rules, chemical analysts shall report alcohol concentrations on the basis of grams of alcohol per 210 liters of breath. All results shall be reported to hundredths of a percent. Any result between hundredths shall be reported to the next lower hundredth.

CHAPTER 8 - HEALTH: PERSONAL
HEALTH

SUBCHAPTER 8A - CHRONIC DISEASE

SECTION .0300 - CHRONIC RENAL
DISEASE CONTROL PROGRAM

.0312 APPEALS PROCEDURES

Appeals shall be conducted in accordance with G.S. 150A and with 10 NCAC 1B. Appeals should be directed to the State Health Director. Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SUBCHAPTER 8B - MATERNAL AND
CHILD HEALTH

SECTION .0300 - LOCAL HEALTH
DEPARTMENT PROGRAM AND FUNDING

.0312 SCOPE OF SERVICES

(a) Local providers may utilize MCH program funds to provide the following services and programs:

(1) Community outreach including education, recruitment, and follow-up of women, infants and children;

(2) Immunization;

(3) Child health assessment, follow-up diagnostic, and treatment services;

(4) School health services including the School Health Fund;

(5) Identification and tracking of infants and children at risk for developmental delays and other handicapping conditions;

(6) Prenatal and postpartum

services;

- (7) MCH Delivery Fund;
- (8) Family planning services;
- (9) Accident and injury prevention services;
- (10) Sudden Infant Death Syndrome grief counseling services and public information activities;
- (11) Lead poisoning prevention and abatement activities;
- (12) Dental services for children;
- (13) Nutrition and social work services; and
- (14) Other activities that promote the health of mothers and children that are not otherwise prohibited by federal and state laws and regulations.

(b) Local providers may not utilize MCH program funds for the following:

- (1) Purchase of inpatient care other than that sponsored through the MCH Delivery Fund and School Health Fund;
- (2) Cash payments to direct recipients of health services;
- (3) Purchase or improvement of land;
- (4) Purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;
- (5) Purchase of major medical equipment; and
- (6) Abortion.

(c) Within the service limitations of this Section and commensurate with funds available to pay for those services as specified in the approved contract budget, the number and type of services offered will be negotiated annually with each local provider, approved by the program, and detailed in the addendum to the contract.

(a) Local providers may utilize MCH child health program funds to provide the following services and programs:

- (1) Community outreach including education, recruitment, and follow-up of infants and children;
- (2) Immunization;
- (3) Child health assessment, follow-up, diagnostic and treatment services;
- (4) School health services including the School Health Fund;
- (5) Identification and tracking of infants and children at risk for

developmental delays and other handicapping conditions;

- (6) Accident and injury prevention services;
- (7) Sudden Infant Death Syndrome grief counseling services and public information activities;
- (8) Lead poisoning prevention and abatement activities;
- (9) Dental services for children;
- (10) Nutrition and social work services; and
- (11) Other activities that promote the health of children that are not otherwise prohibited by federal and state laws and regulations.

(b) Local providers may utilize MCH maternal health program funds to provide the following services and programs:

- (1) Community outreach including education, recruitment, and follow-up of women;
- (2) Prenatal and postpartum services;
- (3) MCH Delivery Fund;
- (4) Family planning services;
- (5) Sudden Infant Death Syndrome grief counseling services and public information activities;
- (6) Nutrition and social work services; and
- (7) Other activities that promote the health of mothers that are not otherwise prohibited by federal and state laws and regulations.

(c) Local providers may not utilize MCH maternal health program funds and child health program funds for the following:

- (1) Purchase of inpatient care other than that authorized under (a)(4) and (b)(3) of this Rule.
- (2) Cash payments to direct recipients of health services;
- (3) Purchase or improvement of land;
- (4) Purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;
- (5) Purchase of major medical equipment; and
- (6) Abortion.

(d) Within the service limitations of this Section and commensurate with funds available to pay for those services as specified in the approved contract budgets, the number and type of services

offered will be negotiated annually with each local provider, approved by the program, and detailed in the addendum to the contract.

.0313 ALLOCATION OF FUNDS:
CONTRACT

(a) There shall be allocated a minimum of twenty thousand dollars (\$20,000) per year of maternal health program funds and twenty thousand dollars (\$20,000) per year of child health program funds shall be allocated to each county of the state.

(c) Any new state or federal funds to be distributed statewide to local providers shall be allocated based upon the following:

(1) A minimum base allocation for each county - the sum total of which shall not be more than 50 percent or less than 25 percent of the total amount to be allocated.

(2) For maternal health program fund allocations, each county's number of low income pregnant women, or children and for child health program fund allocations, each county's number of low income children, both as indicated by the most recent information available from the North Carolina Department of Administration;

(3) Each county's five year infant mortality rate as compared to the state's five year infant mortality rate;

(4) For maternal health program fund allocations, each county's percentage of total state need for maternal health services, or child health services and for child health program fund allocations, each county's percentage of total state need for child health services, both compared to their percentage of total MCH funding for local providers;

(5) Service delivery gaps in given localities; and

(6) Actual utilization of funds in previous fiscal years, special population groups, and other management considerations that relate to a local provider's ability to effectively and efficiently use additional funds.

SECTION .0500 - MIDWIFERY
PERMITS

.0501 PERMIT APPLICATION
(REPEALED)

.0502 QUALIFICATIONS
(REPEALED)

.0503 PERMIT ISSUANCE
(REPEALED)

.0504 EXPIRATION AND
REVOCATION OF PERMITS
(REPEALED)

.0505 APPEALS (REPEALED)

SECTION .0600 - PEDIATRIC
PRIMARY CARE PROGRAM

.0607 GENERAL

(b) The Pediatric Primary Care Program is administered by the Maternal and Child Health Branch, Maternal and Child Care Section, Division of Health Services, Department of Human Resources, P. O. Box 2091, Raleigh, North Carolina 27602, (919) 733-7791- (919) 733-3816.

.0609 PROVIDER ELIGIBILITY

(b) Pediatric primary care funds may be awarded to any public or private nonprofit agency in the event if the MCH Branch determines that a local health department is unwilling or unable to provide pediatric primary care services. All eligible providers which contract for the receipt of pediatric primary care funds are required to provide services in accordance with the plan submitted under Rule .0605 Rule .0611 of this Section and approved by the MCH Branch.

.0611 APPLICATION FOR FUNDS:
PROGRAM PLAN: RENEWAL

(b) Grant proposals for pediatric primary care project funds should be sent to the MCH Branch, N. C. Division of Health Services, P. O. Box 2091, Raleigh, NC 27602. The grant proposal shall include the following:

(3) a description of the medical services to be provided by the Primary Care Program of the local provider including weekly clinic hours when pediatric primary care services will be made available. The plan shall specify, at a minimum, that pediatric primary care will be available at least four hours per day during regular workdays, and that

all patients within the target population who present themselves during established clinic hours with symptoms or complaints requiring medical care will have a medical history taken, and appropriate examination, a written diagnosis of identified problem(s), treatment for a variety of medical conditions and referral as indicated.

- (5) A written agreement for description of the backup services available for patients in need of care when the pediatric primary care clinic is not in operation.

(e) Contracts for pediatric primary care funds shall be subject to annual renewal based upon past performance and the continued need for pediatric primary care services as indicated by the Health Services Information System reports and site visits program reviews performed by the MCH Branch to assess compliance with the requirements of this Section. Approved project proposal/plans must be reviewed annually and updated as needed by the local provider staff. Plans must be made available upon request to State staff during annual program reviews.

.0613 MEDICAL RECORDS

A local provider which receives pediatric primary care funds shall establish and implement written policies and procedures for medical record usage that address at least the following known areas:

- (1) Documentation of Documenting all patient care provided (for example, POHR),
- (2) Method for transferring retrieving pertinent patient information.
- (3) Assuring confidentiality of patient information.
- (4) ~~Obtain~~ Obtaining an informed consent and release of information.
- (5) ~~Retention~~ Retaining and retrieval of retrieving patient records according to the county records manual.

.0614 CLIENT AND THIRD PARTY FEES

(a) A local provider may impose charges on clients for pediatric primary care services. If patient fees are charged, such fees:

- (1) Will be applied according

to a public schedule of charges.

- (2) Will not be imposed on low-income, individuals or their families.
- (3) Will be adjusted to reflect the income, resources, and family size of the individual receiving the services.

(b) If the client fees are charged, providers must make reasonable efforts to collect from the third party payors.

(c) Client and third party fees collected by the local provider for the provision of pediatric primary care services must be used upon approval of the program to enhance, expand or maintain these child health services. No person shall be denied services because of the inability to pay.

.0615 MONITORING AND EVALUATION

(a) A local health department which provider who has been granted pediatric primary care funds shall participate in the Health Services Information System.

(b) The MCH Branch shall conduct site visits at least biennially annual program reviews to assess compliance with the requirements with of this section and to provide technical assistance.

SUBCHAPTER 8D - CRIPPLED CHILDREN: DEVELOPMENTAL DISABILITIES BRANCH

SECTION .0300 - ELIGIBILITY

.0308 APPEALS PROCEDURE CONCERNING ELIGIBILITY

~~(b)~~ Appeals concerning eligibility that are not resolved by the director of Children's Special Health Services shall be conducted in accordance with G.S. 150A and with 10 NCAC 1B. Appeals should be directed to the director, division of health services. Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .0500 - AUTHORIZATION AND BILLING PROCEDURES

.0506 APPEALS PROCEDURE CONCERNING AUTHORIZATIONS (REPEALED)

.0516 APPEALS PROCEDURE
Appeals concerning the

interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .0700 - ROSTERS

.0704 APPEALS PROCEDURE FOR ROSTER APPLICANTS (REPEALED)

.0706 APPEALS PROCEDURE
Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SUBCHAPTER 8F - SICKLE CELL SYNDROME: GENETIC COUNSELING: DEVELOPMENTAL DISABILITIES BRANCH

SECTION .0100 - SICKLE CELL SYNDROME PROGRAM

.0111 MEDICAL SERVICES PROVIDED

(a) The North Carolina sickle cell syndrome program shall provide services only when they are not available through other sources or agencies. Prior to requesting services, it should be determined that the patient is not eligible for services through the division of services for the blind, Medicaid and Medicare programs, school health program, vocational rehabilitation, workmen's compensation or civilian health and medical programs of the uniformed services (CHAMPUS).

(b) If an individual meets the eligibility requirements, he shall be provided the following medical services:

(1) For individuals below the age of 21, all outpatient and all inpatient care shall be paid for by the Grappled Children's Program, including all hospital and physician fees. For individual 21 years of age and older, all outpatient and all inpatient care shall be paid for by the Sickle Cell Syndrome Program.

(2) Outpatient services include:

- (A) routine visits to the physician;
- (B) prescription drugs such as antibiotics;
- (C) general analgesics;
- (D) appliances;
- (E) preventive and limited maintenance dentistry for adult patient only;
- (F) obstetrical care (excluding delivery of baby); and

(G) eye care (when the division of services for the blind will not provide coverage).

The Sickle Cell Syndrome

Program provides reimbursement for services and supplies related to sickle cell disease which are provided to financially and medically eligible individuals 21 years of age and older. Financially eligible children under 21 with sickle cell disease who are not served by physicians rostered with Children's Special Health Services are also covered. The following services are covered:

- (1) inpatient hospitalization which is limited to five days per admission; and
- (a) hospital outpatient services,
- (b) emergency room services,
- (c) physician's services,
- (d) drugs and administration of drugs,
- (e) physical, occupational and speech therapies,
- (f) appliances and supplies,
- (g) dental care for children,
- (h) emergency dental care for adults, limited to services necessary to control bleeding, relieve pain, eliminate acute infection, and treat traumatic injuries to the teeth, and
- (i) eye care, only when documentation is provided that coverage through the Division of Services for the Blind is available.

SUBCHAPTER 8G - PERINATAL CARE

SECTION .0700 - HIGH RISK MATERNITY CLINIC FUNDS AND HIGH RISK MATERNITY CLINIC REIMBURSEMENT FUNDS

.0712 PROVIDER ELIGIBILITY

(a) A county or district health department or other public or private nonprofit health care agency may be a local provider and receive funds pursuant to these Rules.

(b) Notwithstanding 10 NCAC 8G .0504, a for-profit provider may be considered a local provider for the purposes of this Rule if the division determines through a process of request for application that a nonprofit health care provider is not available within the perinatal region. Funding for training and research may not be granted to for-profit agencies.

SUBCHAPTER 8J - THE LENOX BAKER
CHILDREN'S HOSPITAL

SECTION .0900 - MEDICAL STAFF
BYLAWS

.0908 APPEALS

(d) Appeals of a final determination may shall be made to the director, division of health services, in accordance with 10 NCAC 1B G.S. 150B and 10 NCAC 1B.

CHAPTER 10 - HEALTH SERVICES:
ENVIRONMENTAL HEALTH

SUBCHAPTER 10A - SANITATION

SECTION .0300 - SANITATION OF
LODGING PLACES

.0316 APPEALS PROCEDURE
(REPEALED)

.0318 APPEALS PROCEDURE
Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .0400 - SANITATION OF
RESTAURANTS AND OTHER
FOODHANDLING ESTABLISHMENTS

.0485 APPEALS PROCEDURE
Appeals shall be conducted in accordance with G.S. 150A and with 10 NCAC 1B. Appeals should be directed to the director of the division of health services. Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .0500 - SANITATION OF
MEAT MARKETS

.0527 APPEALS PROCEDURE

Appeals shall be conducted in accordance with G.S. 150A and with 10 NCAC 1B. Appeals shall be directed to the Director of the Division of Health Services. Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .1000 - SANITATION OF
SUMMER CAMPS

.1031 APPEALS PROCEDURE
(REPEALED)

.1033 APPEALS PROCEDURE
Appeals concerning the

interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .1100 - SANITATION OF
FOOD AND BEVERAGE VENDING
MACHINES

.1136 APPEALS PROCEDURE
(REPEALED)

.1138 APPEALS PROCEDURE
Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .1200 - GRADE "A" MILK
SANITATION

.1213 APPEALS (REPEALED)

.1214 APPEALS PROCEDURE
Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B.

SECTION .1900 - SEWAGE DISPOSAL
SYSTEMS

.1955 DESIGN CRITERIA FOR
CONVENTIONAL SYSTEMS

(e) The pipe used between the septic tank and the nitrification field shall be a minimum of four-inch inside diameter schedule 40 PVC or equivalent with a minimum fall of not less than one-eighth inch per foot. All joints shall be of watertight construction. The pipe or tubing used between the septic tank and the nitrification line shall be a minimum of four-inch nominal size Schedule 40 polyvinyl chloride (PVC) or acrylonitrile-butadiene-styrene (ABS) or equivalent with a minimum fall of one-eighth inch per foot. Where an effluent distribution device is used between the septic tank and nitrification line, four-inch or greater nonperforated polyethylene (PE) corrugated tubing may be substituted for PVC or ABS pipe provided it is installed between the distribution device and the nitrification line in accordance with standard recommended practices, such as ASTM D2321. All joints from the septic tank to the nitrification line shall be watertight.

.1965 APPEALS PROCEDURE
Appeals concerning the

interpretation and enforcement of the rules in this Section shall be made by written petition and shall be submitted to the Director, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602-2091. All appeals shall be conducted in accordance with G.S. 150A-10 NCAC 1B and with 10 NCAC 4B. Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .2100 - RULES GOVERNING THE SANITATION AND SAFETY OF MIGRANT HOUSING

.2115 PERMITS

(f) A person whose permit is denied, suspended, or revoked may appeal that decision in accordance with G.S. 150A-24 G.S. 150B and 10 NCAC 1B .0200-10 NCAC 1B.

SECTION .2200 - SANITATION OF BED AND BREAKFAST HOMES

.2221 APPEALS PROCEDURE

Appeals shall be conducted in accordance with G.S. 150A and with 10 NCAC 4B. Appeals shall be directed to the director of the division. Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .2300 - DELEGATION OF AUTHORITY TO ENFORCE COMMISSION FOR HEALTH SERVICES' SANITATION RULES

.2307 APPEALS (REPEALED)

.2308 APPEALS PROCEDURE

Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .2400 - SANITATION OF PUBLIC AND RELIGIOUS SCHOOLS

.2417 APPEALS PROCEDURE

Appeals concerning the interpretation and enforcement of the rules in this Section shall be made by written petition and shall be submitted to the State Health Director, Division of Health Services, P. O. Box 2091, Raleigh, NC 27602-2091. All appeals shall be conducted in accordance with G.S. 150A-10 NCAC 4B and with 10 NCAC 4B. Appeals concerning

the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SUBCHAPTER 10B - SHELLFISH SANITATION

SECTION .0100 - SANITATION OF SHELLFISH: GENERAL

- .0101 DEFINITIONS (REPEALED)
 - .0102 CERTIFICATE OF COMPLIANCE (REPEALED)
 - .0103 DAILY RECORD (REPEALED)
 - .0104 SHELLFISH RECEIVING (REPEALED)
 - .0105 SPECIAL PERMITS (REPEALED)
 - .0106 PROHIBITED SHELLFISH HANDLING (REPEALED)
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 - .0109 SHELLFISH STORAGE (REPEALED)
 - .0110 BACTERIOLOGICAL STANDARDS AND ENFORCEMENT PROCEDURES (REPEALED)
 - .0111 SEVERABILITY (REPEALED)
 - .0112 REFERENCE RULES (REPEALED)
- #### SECTION .0200 - OPERATION OF SHELLFISH SHUCKING AND PACKING PLANTS AND SHELL STOCK PLANTS
- .0201 INSPECTION AND APPROVAL (REPEALED)
 - .0202 PERMIT (REPEALED)
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 - .0206 DELIVERY WINDOW (REPEALED)
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 - .0208 LIGHTING (REPEALED)
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 - .0210 WALLS (REPEALED)
 - .0211 SHUCKING BENCHES

(REPEALED)	
.0212 FLY CONTROL (REPEALED)	.0301 CONSTRUCTION (REPEALED)
.0213 REFRIGERATION (REPEALED)	.0302 "BUY" BOATS AND TRUCKS (REPEALED)
.0214 VENTILATION (REPEALED)	.0303 GENERAL REQUIREMENTS FOR OPERATION (REPEALED)
.0215 TOILET FACILITIES (REPEALED)	.0304 PERSONAL HYGIENE (REPEALED)
.0216 RODENT CONTROL (REPEALED)	.0305 EQUIPMENT USAGE (REPEALED)
.0217 PLUMBING (REPEALED)	.0306 WASTE DISPOSAL (REPEALED)
.0218 WATER SUPPLY (REPEALED)	.0307 SALE OF LIVE SHELLFISH (REPEALED)
.0219 HOT WATER SYSTEM (REPEALED)	.0308 SHIPPING (REPEALED)
.0220 HAND WASHING (REPEALED)	.0309 RECORD KEEPING (REPEALED)
.0221 EQUIPMENT CONSTRUCTION (REPEALED)	.0310 TAGGING (REPEALED)
.0222 SANITIZING EQUIPMENT (REPEALED)	.0311 BULK SHIPMENTS (REPEALED)
.0223 CONTAINERS (REPEALED)	.0312 BOAT OPERATORS RECORDS (REPEALED)
.0224 NON-FOOD CONTACT SURFACES (REPEALED)	.0313 STORAGE OF SHELL STOCK (REPEALED)
.0225 GENERAL REQUIREMENTS FOR OPERATION (REPEALED)	.0314 REPACKING OF SHELLFISH (REPEALED)
.0226 PERSONAL HYGIENE (REPEALED)	.0315 RESHIPPIERS (REPEALED)
.0227 EQUIPMENT SANITATION (REPEALED)	SECTION .0400 - HEAT SHOCK METHOD OF PREPARATION OF OYSTERS FOR SHUCKING
.0228 STORAGE (REPEALED)	.0401 FACILITIES (REPEALED)
.0229 SHELLFISH SHUCKING (REPEALED)	.0402 LIGHTING (REPEALED)
.0230 ICE (REPEALED)	.0403 VENTILATION (REPEALED)
.0231 SHELLFISH COOLING (REPEALED)	.0404 TANK CONSTRUCTION (REPEALED)
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.0233 SUPERVISION (REPEALED)	.0406 SHELLSTOCK WASHING (REPEALED)
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.0237 ADULTERATED OR MISBRANDED SHELLFISH (REPEALED)	.0410 COOLING (REPEALED)
.0238 APPEALS PROCEDURE (REPEALED)	.0411 CLEANING (REPEALED)
SECTION .0300 - OPERATION OF SHELL STOCK PLANTS	

.0412 SANITIZING (REPEALED)

.0413 RECORDS (REPEALED)

SECTION .0800 - SANITATION OF
SHELLFISH - GENERAL

.0801 DEFINITIONS

The following definitions shall
apply throughout this
Subchapter:

- (1) "Adulterated" means the following:
 - (a) Any shellfish that have been harvested from prohibited areas;
 - (b) Any shellfish that have been shucked, packed, or otherwise processed in a plant which has not been permitted by the division in accordance with these Rules;
 - (c) Any shellfish which exceed the bacteriological standards in Rule .0930 of this Subchapter;
 - (d) Any shellfish which are putrid or unfit for human consumption;
 - (e) Any shellfish which have been exposed to any unsanitary conditions; or
 - (f) Any shellfish which contain any added substance, unless the substance is approved by the division or the United States Food and Drug Administration.
- (2) "Approved area" means an area determined suitable for the harvest of shellfish for direct market purposes.
- (3) "Bulk shipment" means a shipment of loose shellstock.
- (4) "Buy boat or buy truck" means any approved boat or truck that is used by a person permitted under these Rules to transport shellstock from one or more harvesters to a facility permitted under these Rules.
- (5) "Depuration" means mechanical purification or the removal of adulteration from live shellstock by any artificially controlled means.
- (6) "Depuration facility" means the physical structure wherein depuration is accomplished, including all the appurtenances necessary to the effective operation thereof.
- (7) "Division" means the Division of Health Services or its authorized agents.
- (8) "Heat shock process" means the practice of heating shellstock to facilitate removal of the shellfish meat from the shell.
- (9) "Misbranded" means the

following:

- (a) Any shellfish which are not labeled with a valid identification number awarded by regulatory authority of the state or territory of origin of the shellfish; or
- (b) Any shellfish which are not labeled as required by these Rules.
- (10) "Operating season" means the season of the year during which a shellfish product is processed.
- (11) "Person" means an individual, corporation, company, association, partnership, unit of government or other legal entity.
- (12) "Prohibited area" means an area unsuitable for the harvesting of shellfish for direct market purposes.
- (13) "Relaying or transplanting" means the act of removing shellfish from one growing area or shellfish grounds to another area or ground for any purpose.
- (14) "Repacking plant" means a shipper, other than the original shucker-packer, who repacks shucked shellfish into containers for delivery to the consumer.
- (15) "Reshipper" means a shipper who ships shucked shellfish in original containers, or shellstock, from permitted shellstock dealers to other dealers or to consumers.
- (16) "Sanitary survey" means the evaluation of factors having a bearing on the sanitary quality of a shellfish growing area including sources of pollution, the effects of wind, tides and currents in the distribution and dilution of polluting materials, and the bacteriological quality of water.
- (17) "Sanitize" means the approved bactericidal treatment by a process which provides sufficient accumulative heat or concentration of chemicals for sufficient time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.
- (18) "SELL BY date" means a date conspicuously placed on a container or tag by which a consumer is informed of the latest date the product will remain suitable for sale.
- (19) "Shellfish" means

oysters, mussels, and all varieties of clams.

- (20) "Shellstock" means any shellfish which remain in their shells.
- (21) "Shellstock conveyance" means all trucks, trailers, or other conveyances used to transport shellstock.
- (22) "Shellstock dealer" means a person who buys, sells, stores, or transports or causes to be transported shellstock which was not obtained from a person permitted under these Rules.
- (23) "Shellstock plant" means any establishment where shellstock are washed, packed, or otherwise prepared for sale.
- (24) "Shucking and packing plant" means any establishment or place where shellfish are shucked and packed for sale.
- (25) "Wet storage" means the temporary storage of shellstock from permitted or approved sources, in approved natural sea water.

.0802 PERMITS

(a) No person shall operate any of the following facilities without a permit issued by the division:

- (1) Depuration facilities.
- (2) Shellstock plants.
- (3) Shucking and packing plants.
- (4) Wet storage areas.
- (5) Repacking plants.

(b) No person shall operate as a shellstock dealer without a permit issued by the division.

(c) A permit may be issued to a reshipper when required for out of state shipment.

(d) Application for a permit shall be submitted in writing to the division at the Shellfish Sanitation Office, Fisheries Building, Arendell Street, Morehead City, North Carolina, 28557. Application forms are available from the division.

(e) No permit shall be issued by the division until an inspection shows that the facilities and equipment comply with all applicable rules of this Subchapter.

(f) All permits shall be posted in a conspicuous place in the facilities. All permits shall expire on April 30 of each year.

(g) Plans and specifications for proposed new construction or remodeling shall be submitted to the division for review and approval.

(h) A permit may be

revoked or suspended pursuant to G.S. 130A-23.

.0803 REMOVAL OF SHELLFISH

No person shall take shellfish from any shellfish grounds or any public waters which have not been approved by the division unless the person has a permit for such purpose under Rule .0804 or .0805 of these Rules.

.0804 RELAYING PERMITS

If a person is granted a relaying permit by the division and the Department of Natural Resources and Community Development, shellfish may be removed from certain designated prohibited areas for conditioning and purification prior to marketing and marketed after relaying in a large body of clean water, but only under the following conditions:

(1) Application for relaying must be received by the North Carolina Department of Natural Resources and Community Development and the division 15 days prior to relaying.

(2) No permits shall be issued for removal of shellfish from prohibited areas during the open market season.

(3) Removal and relaying shall be under the supervision of the division and the Department of Natural Resources and Community Development.

(4) Shellfish relayed from a prohibited area to a designated area of approved water shall remain down for a period of not less than fourteen days when the water in which shellfish are relayed has a temperature above 50°F (10°C). When the water temperature is below 50°F (10°C), shellfish shall not be relayed.

(5) Permission to relay shellfish shall be given only to persons who have not been convicted of harvesting shellfish from prohibited areas within the past 12 months.

.0805 DEPURATION HARVESTING PERMITS

If a person is granted a depuration harvesting permit by the division and the Department of Natural Resources and Community Development, shellfish may be removed from certain designated prohibited areas for depuration prior to marketing and marketed after depuration in

a permitted facility, but only under the following conditions:

- (1) Application for a depuration harvesting permit must be received by the North Carolina Department of Natural Resources and Community Development and the division 15 days prior to harvesting for depuration purposes.
- (2) Harvesting for depuration purposes shall be under the supervision of the division and the Department of Natural Resources and Community Development.
- (3) Permission to harvest shellfish for depuration purposes shall be given only to persons who have not been convicted of harvesting shellfish from prohibited areas within the past 12 months.

.0806 APPEALS PROCEDURE

Appeals concerning the interpretation and enforcement of the rules in this Subchapter shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .0900 - SANITATION OF SHELLFISH - GENERAL OPERATION STANDARDS

.0901 APPLICABILITY OF RULES

The rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0802.

.0902 GENERAL REQUIREMENTS FOR OPERATION

(a) During the operating season the plant shall be used for no purpose other than the handling of shellfish. All unnecessary equipment and materials shall be removed from the plant and the floors kept clear for thorough cleaning.

(b) All floors, walls, shucking benches and stools, shucking blocks, tables, skimmers, blowers, colanders, buckets, or any other equipment or utensils used in the processing operation shall be cleaned and sanitized daily, or more frequently as may be necessary during the day's operation to prevent the introduction of undesirable microbiological organisms and filth into the shellfish product.

(c) Ceilings and windows shall also be kept clean. Refrigerators, refrigeration rooms, and ice boxes shall be washed and sanitized.

(d) Wheelbarrows, measures,

baskets, shovels, and other implements used in the handling of shellstock shall not be used for any other purpose and shall be cleaned and stored in the shellstock room when not in use.

.0903 SUPERVISION

The owner or manager shall either personally supervise or shall designate an individual whose principal duty shall be to supervise and be responsible for compliance with the rules of this Subchapter. No unauthorized persons shall be allowed in the plant during periods of operation.

.0904 CONSTRUCTION

Shellfish plants shall be adequate in size and construction to permit compliance with the operational provisions of this Subchapter.

.0905 PLANT LOCATION

Shellfish plants shall be located so that they will not be subject to flooding by high tides.

.0906 FLOORS

Floors shall be of concrete or other equally impervious material, constructed so that they may be easily and thoroughly cleaned and shall be sloped so that water drains completely and rapidly. For new construction, the joints between walls and floors shall be rounded to expedite cleaning.

.0907 WALLS AND CEILINGS

Walls to a height of at least two feet above the floor shall be constructed of smooth concrete or other equally impervious material. The remainder of the walls and ceilings shall be smooth concrete, cement plaster, or other material approved by the division and shall be painted with a light color washable paint.

.0908 LIGHTING

Natural or artificial lighting shall be provided in all parts of the plant. Light bulbs, fixtures, or other glass suspended within the plant shall be safety type or otherwise protected to prevent contamination in case of breakage. Lighting intensities shall be a minimum of 25 foot candles on working surfaces in packing and shucking rooms.

.0909 VENTILATION

Ventilation shall be

provided to eliminate odors and condensation.

.0910 FLY CONTROL

All outside openings shall be screened, provided with wind curtains or be provided with other fly control methods approved by the division. All screens shall be kept in good repair. All outside doors shall open outward and shall be self-closing. The use and storage of pesticides shall comply with all applicable state and federal guidelines.

.0911 RODENT AND ANIMAL CONTROL

The plant shall be constructed to prevent entrance of rodents and other vermin. The storage and use of rodenticides shall comply with all applicable state and federal guidelines. No animals shall be allowed in the plant at any time.

.0912 PLUMBING

All plumbing shall be done in compliance with applicable plumbing codes.

.0913 WATER SUPPLY

(a) The water supply shall be from a source approved by the division.

(b) The water supply used shall be located, constructed, maintained, and operated in accordance with the Commission for Health Services' rules governing water supplies. Copies of 10 NCAC 10A .1700 and 10 NCAC 10D .0600 through .2500 as amended through January 1, 1987 may be obtained from the Division of Health Services, Department of Human Resources, P. O. Box 2091, Raleigh, North Carolina 27602-2091.

.0914 TOILET FACILITIES

Separate and adequate toilet facilities shall be provided for each sex employed and shall comply with the N.C. State Building Code, Volume 2, Plumbing. Floors, walls, and ceilings shall be smooth, easily cleanable and kept clean. Fixtures shall be kept clean. All toilet wastes and other sewage shall be disposed of in a public sewer system or in the absence of a public sewer system, by an on site sewage disposal system approved by the division or the Department of Natural Resources and Community Development in accordance with G.S. 130A-335.

.0915 WASTE DISPOSAL

Shells, washings, and other wastes shall be disposed of in a sanitary landfill or in a sanitary manner approved by the division.

.0916 PERSONAL HYGIENE

(a) All employees shall wash their hands thoroughly with soap and running water before beginning work and again after each interruption. Signs to this effect shall be posted in conspicuous places in the plant by the operator.

(b) Additionally, all persons handling shucked shellfish shall sanitize their hands before beginning work and again after each interruption.

(c) All persons employed or engaged in the handling, shucking, or packing of shellfish shall wear clean, washable outer clothing. Clean plastic or rubber aprons, overalls, and rubber gloves shall be considered satisfactory.

(d) Employees shall not use tobacco in any form in the rooms where shellfish are stored, processed, or handled.

(e) All persons known to be a carrier of any disease which can be transmitted through the handling of shellfish or who have an infected wound or open lesion on any exposed portion of their bodies shall be prohibited from handling shellfish.

.0917 LOCKERS

A separate room or locker shall be provided for storing employees' street clothing, aprons, gloves, and personal articles.

.0918 SUPPLY STORAGE

Storage room shall be provided for storing shipping containers, tags, and other supplies.

.0919 HARVEST BOATS

All boats used in the harvesting and handling of shellstock shall be kept clean and repaired such that the shellstock thereon shall not be subject to adulteration by bilge water, by leakage of water from prohibited areas, or by other means. Decks, holds, or bins used for shellstock on boats shall not be washed with water from prohibited areas. Human wastes shall not be discharged into shellfish waters.

.0920 TRANSPORTING SHELLSTOCK

(a) All shellstock storage

areas in trucks, buy boats, buy trucks, trailers, and other conveyances used for transporting shellstock shall be enclosed, tightly constructed, painted with a light color washable paint, kept clean, and shall be subject to inspection by the division.

(b) Shellstock shall be shipped under temperature and sanitary conditions in accordance with these Rules which will keep them alive and clean and will prevent adulteration or deterioration. During the months of April through October, inclusive, all shellstock shall be kept under mechanical refrigeration at a temperature of 50°F (10°C) or below. All conveyances used to transport shellstock shall be equipped with an operating thermometer.

(c) Buy boats and buy trucks shall be kept clean with water from a source approved by the division under Rule .0913 of this Subchapter. Buy boats and buy trucks shall provide storage space for clean shipping containers, identification tags, and records.

.0921 DAILY RECORD

All permitted persons who conduct any wholesale business of buying, selling, or shipping shellfish shall keep an accurate, daily record which shall show the names and addresses of all persons from whom shellfish are received, the location of the source of shellfish, and the names and addresses of all persons to whom shellfish are sold or shipped. These records shall be recorded in a permanently bound ledger and shall be kept on file for one year. All records shall be open to inspection by the division at any time during business hours.

.0922 SHELLSTOCK CLEANING

No person shall offer for sale any shellstock which have not been washed free of bottom sediments and detritus.

.0923 SALE OF LIVE SHELLSTOCK

Only live shellstock shall be offered for sale.

.0924 SHELLFISH RECEIVING

No person shall receive or accept any shellfish unless the container or package bears the tag or label required by these Rules. This rule does not apply to the receipt of shellstock from a harvester to a permitted dealer.

.0925 TAGGING

(a) In order that information may be available to the division with reference to the origin of shellstock, containers holding shellstock shall be identified with a uniform tag or label. If shellstock is sold directly to the final consumer, the permitted dealer must display its name, address, and permit number in full view of the buying public, in lieu of individual shipping tags. If shellstock is to be resold or sold to a commercial establishment, each individual package must be labeled or tagged with the required information.

(b) The information upon the tag or label shall include the name and address of shipper, permit number issued by the division, together with the state abbreviation, date of harvesting, date of shipment or of reshipment, and name of the waters from which the shellfish were harvested.

(c) The stub of the tag shall not be removed from any package of shellstock until all of the contents of the package have been removed. Tags shall be durable, waterproof, and legible.

(d) All shellstock from a depuration plant must be identified as having been cleansed by a depuration plant attested by a name and permit number on the tag.

.0926 BULK SHIPMENTS

Shipment in bulk shall not be made except where the shipment is from only one consignor to one consignee and accompanied by the uniform shipping tag.

.0927 SHELLSTOCK STORAGE

Shellstock held in wet or dry storage must be kept so that they will not become adulterated. All shellstock held in dry storage during the months of April through October, inclusive, shall be kept under mechanical refrigeration at a temperature of 50°F (10°C) or below. Refrigeration rooms and trucks shall be equipped with operating thermometers.

.0928 SAMPLING AND TESTING

Samples of shellfish may be taken and bacteriologically examined for any public health reason by agents of the division at any time or place. Samples of shellfish shall be furnished by operators of plants, trucks,

carriers, stores, restaurants, and other places where shellfish are sold.

.0929 STOPSALE OR DISPOSAL OF SHELLFISH

(a) Shellfish or shellfish products processed or prepared for sale to the public determined to be adulterated or misbranded shall be subject to stopsale or disposal by the division. The division may temporarily or permanently issue an order to stop sale or condemn, destroy, or otherwise dispose of all shellfish or shellfish containers found to be adulterated or misbranded.

(b) All shellfish shall be disposed of in a manner prescribed by the division or by a court of appropriate jurisdiction.

.0930 BACTERIOLOGICAL STANDARDS AND ENFORCEMENT PROCEDURES

(a) Shellfish shucked or in the shell and intended or offered for sale in North Carolina that exceed an *Escherichia coli* Most Probable Number of 230 per 100 grams of sample or a total bacteria count of more than 500,000 per gram or contain pathogenic organisms in sufficient numbers to be hazardous to the public health shall be deemed adulterated by the division. Shellfish contaminated by any other substance which renders it unsafe for human consumption shall be deemed adulterated by the division.

(b) When it has been determined by the division that shellfish have not been grown, harvested, stored, treated, transported, handled, shucked, packed or offered for sale in compliance with 10 NCAC 10B .0800 through .1304 of this Subchapter, those shellfish shall be deemed adulterated.

.0931 STANDARDS FOR AN APPROVED SHELLFISH GROWING AREA

In order that an area be approved for shellfish harvesting for direct market purposes there are certain criteria that must be satisfied as indicated by sanitary survey:

(1) the shoreline survey has indicated that there is no significant point source contamination (sewage treatment outfall, farm drainage ditches, marina, etc.);

(2) the area is not so

contaminated with fecal material that consumption of the shellfish might be hazardous;

(3) the area is not so contaminated with radionuclides or industrial wastes that consumption of the shellfish might be hazardous; and

(4) the median fecal coliform Most Probable Number (MPN) or the geometric mean MPN of water shall not exceed 14 per 100 milliliters, and not more than 10 percent of the samples shall exceed a fecal coliform MPN of 43 per 100 milliliters (per five tube decimal dilution) in those portions of areas most probably exposed to fecal contamination during most unfavorable hydrographic conditions.

SECTION .1000 - OPERATION OF SHELLSTOCK PLANTS AND RESHIPPIERS

.1001 GENERAL REQUIREMENTS

The rules in Section .0900 shall apply for the operation of shellstock plants and reshippers.

.1002 GRADING SHELLSTOCK

(a) The grading of shellstock shall be conducted only in a permitted shellstock plant.

(b) A separate grading room or area shall be required for the grading of shellstock.

.1003 GRADER

The grader used to grade shellstock, and any other accessories or tables used in the grading operation, shall be constructed for ease of cleaning and shall be properly maintained.

.1004 RESHIPPIERS

(a) If shellstock is handled, all applicable requirements outlined for shellstock plants shall be met. When shucked shellfish are handled, they shall be obtained from a permitted shipper. The shucked shellfish shall be received in approved shipping containers at a temperature of 40°F (4°C) or below. The temperature of the shellfish shall not exceed 40°F (4°C) during the holding and shipping periods.

(b) Reshippers shall keep adequate and accurate records indicating the source from which shellfish were purchased, the date purchased, the name of the waters from which the shellfish

were harvested, and the names and addresses of persons to whom the shellfish were sold.

SECTION .1100 - OPERATION OF SHELLFISH SHUCKING AND PACKING PLANTS AND REPACKING PLANTS

.1101 GENERAL REQUIREMENTS

The rules in Section .0900 shall apply for the operation of shucking and packing plants and repacking plants.

.1102 SEPARATION OF OPERATIONS

A shucking and packing plant shall provide separate rooms for shellstock storage, shucking, heat shock, and general storage. A separate packing area with delivery shelf shall be required.

.1103 HOT WATER SYSTEM

An automatically regulated hot water system shall be provided which has sufficient capacity to furnish water at a temperature of at least 130°F (54°C) during all hours of plant operation.

.1104 HANDWASHING FACILITIES

Handwashing facilities, including lavatories, hot and cold running water (combination supply faucet), soap, and individual towels shall be provided in a convenient place in the shucking and packing rooms. Signs requiring handwashing shall be conspicuously displayed within the plant.

.1105 DELIVERY WINDOW OR SHELF

A delivery window or a non-corrosive shelf shall be installed in the partition between the shucking room and packing area. No shuckers or unauthorized personnel shall be allowed in the packing room or area. The delivery window shall be equipped with a shelf completely covered with smooth, non-corrosive metal or other material approved by the division for such purpose, sloped to drain towards the shucking room.

.1106 NON-FOOD CONTACT SURFACES

All non-food contact surfaces of equipment shall be non-absorbent, and constructed to be easily cleaned.

.1107 SHUCKING BENCHES

Shucking benches, tables, and contiguous walls to a height of at least two feet above the bench top, shall be of smooth concrete, non-corrosive metal,

or other durable non-absorbent material, free from cracks and pits, and so constructed that drainage is complete and rapid and is directed away from the stored shellfish. Shucking blocks shall be solid, one-piece construction, removable, and easily cleanable. The stands, stalls and stools shall be of smooth material and shall be painted with a light colored washable paint.

.1108 EQUIPMENT CONSTRUCTION

(a) All pails, skimmers, measures, tanks, tubs, blowers, paddles, and other equipment, which come into contact with shucked shellfish or with ice used for direct cooling of shellfish, shall be made of smooth, non-corrosive, impervious materials and constructed so as to be easily cleanable and shall be kept clean and in good repair.

(b) All equipment, including external and internal blower lines and hoses below a point two inches above the overflow level of the tank and blower drain valves, shall be constructed as to be easily cleanable; and there shall be no V-type threads in the food-product zone of the blower.

(c) The blower and skimmer drain shall not be directly connected with the sewer. There shall be an air gap, approved by the division, between the blower and/or skimmer outlet. A floor drain shall be provided.

(d) Air-pump intakes shall be located in a place protected from dirt and other contamination, and shall be equipped with filters.

.1109 SANITIZING EQUIPMENT

Washing and sanitizing facilities, including a three-compartment wash sink of adequate size to wash the largest utensils and pots used in the plant shall be provided in a section of the plant convenient to the work areas. The sink shall be kept in good repair. Permanent hot and cold water connections, with combination supply faucets, shall be installed so that all vats may receive hot and cold water. Either steam, hot water, or a sanitizing solution shall be used to sanitize utensils and equipment.

.1110 EQUIPMENT SANITATION

All utensils and tools, such as opening knives, shucking pails, measures, skimmers, colanders,

tanks, tubs, paddles, and containers which come in contact with the shellfish shall be thoroughly cleaned and then sanitized:

- (1) by steam in a steam chamber or box equipped with an indicating thermometer located in the coldest zone, by exposure to a temperature of 170°F (76°C) for at least 15 minutes, or to a temperature of 200°F (93°C) for at least five minutes;
- (2) by immersion in hot water at a temperature of 170°F (76°C) for at least two minutes (a thermometer is required);
- (3) by immersion for at least one minute in, or exposure for at least one minute to, a constant flow of a solution containing not less than 100 parts per million chlorine residual. Utensils and equipment which have to be washed in place will require washing, rinsing, and sanitizing; or
- (4) by a bactericidal treatment method which will provide equivalent sanitization to that provided by the methods authorized in (a)(1), (a)(2), or (a)(3), as determined by the division. If the bactericidal immersion or spray treatment is employed, testing kits shall be used to ensure that minimum solution strengths are maintained throughout the cleaning process.

.1111 EQUIPMENT STORAGE

Equipment and utensils which have been cleaned and given bactericidal treatment shall be stored to protect against contamination.

.1112 ICE

Ice shall be obtained from a water supply approved by the division pursuant to Rule .0913 of this Subchapter and shall be stored and handled in a sanitary manner.

.1113 SHELLFISH SHUCKING

(a) Shellfish shall be shucked in a manner that they are not subject to adulteration. Shellstock shall be reasonably free of mud when shucked. Only live shellstock shall be shucked.

(b) Shucking of shellstock shall only be permitted on approved shucking tables or benches. Floors used by shuckers shall not be used for the storage of shellfish or the

retention of shucking pails or other food contact containers.

(c) When shellstock are stored in the shucking room, protection shall be provided for the storage space to prevent possible adulteration from wash water wastes and from the feet of the employees.

(d) Shucking pails shall be placed so as to exclude the drippings from shells and from the hands of shuckers. The pails shall be rinsed with running tap water before each filling.

(e) Shucked shellfish, when washed, shall be thoroughly washed on a skimmer or a container approved by the division with cold running water from a source approved by the division under Rule .0913 of this Subchapter.

(f) The return of overage from packing is not permitted.

(g) If blowers are used for cleansing, the total time that shellfish are in contact with water after leaving the shucker, including the time of washing, rinsing, and any other contact with water shall not be more than 30 minutes. In computing the time of contact with water, the length of time that shellfish are in contact with water that is agitated by blowing or otherwise, shall be calculated at twice its actual length. Before packing into containers for shipment or delivery for consumption, the shellfish shall be drained and packed without any added substance.

(h) Pre-cooling of shucked shellfish shall be done in equipment which meets National Sanitation Foundation standards or the equivalent.

.1114 CONTAINERS

(a) Containers used for transporting shucked shellfish shall be approved by the division. These containers shall not be reused for packing shellfish.

(b) Shucked shellfish shall be packed and shipped in approved containers, sealed so that tampering can be detected. Each individual container shall have permanently recorded on the container, so as to be conspicuous, the shucker-packer's, repacker's, or distributor's name and address, and the shucker-packer's or repacker's permit number preceded by the state abbreviation.

(c) Any container of shucked

shellfish which has a capacity of more than 64 fluid ounces shall be dated as of the date packed on both the lid and sidewall or bottom. Any container of shucked shellfish which has a capacity of 64 fluid ounces or less shall indicate a SELL BY date.

(d) No person shall use containers bearing a permit number other than the number assigned to him.

.1115 SHELLFISH COOLING

Shucked shellfish shall be cooled to an internal temperature of 45°F (7°C) or less within two hours after delivery to the packing room. Storage temperatures shall be 32° - 40°F (0° - 4°C). No ice or other foreign substance shall be allowed to come into contact with the shellfish after processing has been completed.

.1116 SHELLFISH FREEZING

(a) Shellfish shall be frozen within three days of shucking and packing and the pack date shall be preceded by the letter (F).

(b) Frozen shellfish shall not be thawed for resale or be repacked.

(c) A temperature of 0°F (-18°C) or less shall be maintained in the frozen storage rooms.

.1117 SHIPPING

(a) Shucked shellfish shall be stored and shipped at temperatures between 32° - 40°F (0° - 4°C).

(b) Shipments shall be tagged or labeled to show the name and address of the consignee, the name and address of the shipper, the name of the state or territory of origin, and the permit number of the shipper.

.1118 HEAT SHOCK METHOD OF PREPARATION OF SHELLFISH

(a) Facilities. If a shucking and packing plant uses the heat shock process, it shall be done in an separate room adjacent to the shellstock storage room and the shucking room, approved by the division for such purpose.

(b) Tank construction. The heat shock tank shall be constructed of smooth, non-corrosive metal, designed to drain quickly and completely and to be easily and thoroughly cleaned.

(c) Booster heaters. All heat shock tanks shall be equipped with suitable booster heaters that are thermostatically controlled.

(d) Shellstock washing. All shellstock subjected to the heat shock process shall be thoroughly washed with flowing potable water immediately prior to the heat shock operation.

(e) Water temperature. During the heat shock process the water shall be maintained at not less than 145°F (63°C) or more than 150°F (65°C). An accurate thermometer shall be available and used to determine the temperature during the heat shock process. All water shall be completely drained from heat shock process. All water shall be completely drained from heat shock tanks and the tanks cleaned at least once in each three hour operational period or more often if necessary.

(f) Time requirements. Shellstock subjected to the heat shock process shall not be immersed in the heat shock water longer than three and one half minutes. An accurate timing device shall be available and used to determine the immersion time.

(g) Alternatives to heat shock method. Nothing in these Rules shall be construed to prohibit any other process which has been found equally effective and has been approved by the division.

(h) Water requirements. At least eight gallons of heat shock water shall be maintained in the tank for each one half bushel of shellstock being treated. All water used in the heat shock process shall be from a source approved by the division under Rule .0913 of this Subchapter.

(i) Cooling. Immediately after the heat shock process, all treated shellstock shall be subjected to a cool-down with potable tap water. All heat shocked shellstock shall be handled in a manner to prevent adulteration of the product. Shellfish which have been subjected to the heat shock process shall be cooled to an internal temperature of 45°F (7°C) or below within two hours after this process and shall be placed in storage at 32° - 40°F (0° - 4°C).

(j) Cleaning. At the close of each day's operation, the heat shock tank shall be completely emptied of all water, mud, detritus, and thoroughly cleaned and then rinsed with flowing potable water. Water, mud, detritus, and other by-products shall be disposed of in a manner approved by the division.

(k) Sanitizing. All heat

shock tanks shall be sanitized immediately before starting each day's operation.

(1) Records. Adequate records of heat shock processes shall be kept as required by the division.

.1119 REPACKING OF SHELLFISH

(a) If repacking is practiced, it shall be done strictly in accordance with all the requirements stipulated for shucking and packing plants except those related to shucking.

(b) The shucked shellfish to be repacked shall be received at the repacking plant in approved shipping containers at a temperature of 32° - 40°F (0° - 4°C) or less.

(c) Shellfish shall not be repacked more than one time.

(d) The temperature of the shellfish shall not exceed 45°F (7°C) during the repacking process.

(e) Containers with a capacity of 64 fluid ounces or less in which shucked shellfish are repacked shall indicate a SELL BY date preceded by the letter R. Containers with a capacity above 64 fluid ounces in which shucked shellfish are repacked shall be dated to show the original packing date and repacking date, which will be preceded by the letter (R).

(f) Repackers shall keep accurate records indicating source from which shellfish were purchased, the date packed, the date of purchase, the area within the state or territory from which the shellfish were harvested, and the names and addresses of persons to whom the shellfish were sold.

SECTION .1200 - OPERATION OF DEPURATION (MECHANICAL PURIFICATION) FACILITIES

.1201 GENERAL REQUIREMENTS

The rules in Section .0900 shall apply for the operation of depuration facilities.

.1202 FACILITY SUPERVISION

(a) The owner shall either personally supervise or designate an individual to be responsible for compliance with the rules of this Subchapter.

(b) The depuration facility shall be used for no purpose other than the treatment of shellfish and research activities related thereto. No unauthorized persons shall be

allowed in the depuration facility.

.1203 FACILITY DESIGN AND SANITATION

(a) The plant layout shall be designed to physically separate undepurated shellstock from depurated shellstock and be approved by the division.

(b) Tank design and construction. The tank shall be designed to allow for good water circulation. The tank shall be of sufficient size to allow at least eight cubic feet of sea water per bushel of shellstock in the tank except for soft clams (*Mya arenaria*), which requires at least five cubic feet of sea water per bushel. If the tank is rectangular in shape, length to width ratio shall be from two to one (2:1) to four to one (4:1).

(c) The tank shall be designed so that scum and sludge (shellfish feces, pseudo feces, sand grit, etc.), can be easily removed or flushed out. The bottom shall be sloped longitudinally at least one fourth to one half inch per foot toward the outlet end.

(d) To facilitate proper cleaning and sanitation, as well as proper depuration of shellfish, tanks shall be constructed from impervious, non-toxic, and inert materials. Coatings, when used, shall be approved by the division. Pipes conveying process water throughout the plant shall be so constructed as to be easily disassembled to facilitate cleaning and sanitizing.

(e) Facility sanitation. The general sanitation requirement of the facility, physical structure, equipment and utensils, and the sanitary requirements for operations, processes, and personnel shall be approved by the division.

(f) Material. The equipment in the food product zone shall be made of smooth, corrosion resistant, impervious, non-toxic material and shall meet National Sanitation Foundation standards or the equivalent.

(g) Plumbing and related facilities. Plumbing shall be installed in compliance with state and local plumbing ordinances. Lavatories shall have running hot and cold water. Lavatories, other than those located in restrooms, shall be located so that their use by personnel can be readily observed. An automatically regulated hot water system shall

be provided which has sufficient capacity to furnish water at a temperature of at least 130°F (54°C) during all hours of plant operation. Signs shall be posted in toilet rooms and near lavatories, directing employees to wash their hands before starting work and after each interruption. Pump volutes and impellers shall be of material which is non-toxic. The facilities domestic sewage shall be discharged into a sewage disposal system constructed in accordance with state and local requirements.

(h) Floors. Floors of rooms in which shellstock are handled or stored shall be constructed of concrete or other material impervious to water; shall be graded to drain quickly; shall be free from cracks and uneven surfaces that interfere with proper cleaning or drainage; and shall be maintained in good repair.

(i) Walls and ceilings. The interior surfaces of rooms in which shellstock are handled or stored shall be smooth, washable, a light color, and kept in good repair.

(j) Lighting. Natural or artificial light shall be provided in all working and storage rooms. Light bulbs, fixtures, or other glass suspended within the facility shall be of safety-type or otherwise protected to prevent contamination in case of breakage. The water surface of the depuration tanks shall not be subjected to direct sunlight.

(k) Heating and ventilation. Working rooms shall be ventilated. Working rooms shall be equipped with heating equipment for use as necessary during the months of September to April.

(l) Water supply. The water supply for non-depuration uses shall be from a source approved by the division under Rule .0913 of this Subchapter.

(m) Rodent control. The depuration facility shall comply with the provisions of Rule .0911 of this Subchapter.

(n) General cleanliness. The depuration facility shall be kept clean and free of litter and rubbish. Miscellaneous and unused equipment and articles which are not necessary to the facility operations shall not be stored in rooms used for depuration or shellstock storage. Culled shellstock shall be removed promptly from the facility.

(o) Health of personnel. Any person known to be infected with any disease in a communicable form, or to be a carrier of any disease which can be transmitted through the handling of shellfish, or who has an infected wound or open lesion on any exposed portion of his body, shall be excluded from handling shellfish in the facility.

(p) Disposal of all waste water shall be permitted by the appropriate agency.

.1204 LABORATORY PROCEDURES

(a) The laboratory and the laboratory operator shall be approved by the division.

(b) The laboratory shall conduct routine bacterial examinations of process water and shellfish, and special examinations when necessary or required in accordance with Rule .1206 of this Subchapter.

(c) Bacterial examinations of shellfish and sea water shall be made in accordance with "Recommended Procedures for Bacterial Examination of Sea Water and Shellfish", American Public Health Association, Inc., Fourth Edition, 1970, or other methods approved by the division. A copy of this publication is available for inspection at the Shellfish Sanitation Office, Fisheries Building, Arendell Street, Morehead City, North Carolina 28557.

(d) All other physical, chemical, or biological tests shall be conducted according to "Standard Methods for the Examination of Water and Waste Water", Fifteenth Edition, 1981, prepared and published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation, or other methods approved by the division. A copy of this publication is available for inspection at the Shellfish Sanitation Office, Fisheries Building, Arendell Street, Morehead City, North Carolina 28557.

.1205 FACILITY OPERATIONS

(a) Source of shellfish. Shellfish shall be accepted for treatment at a shellfish depuration facility only from areas designated for this purpose by the division. A detailed description of all areas from which shellfish may be taken for depuration purposes, updated as necessary, shall be prepared by the

division and the Department of Natural Resources and Community Development, and filed with the facility owner or supervisor. The facility supervisor shall inspect all containers of raw shellstock upon arrival at the facility to verify that they contain the species and quantity stated on the surveillance officer's reports.

(b) Shellstock containers. Shellstock shall be accepted for treatment and released after depuration in clean containers only. All containers shall be constructed of non-absorbent and rust-proof material, and kept clean and free from foreign matter. Burlap bags or similar absorbent material shall not be used for transporting shellstock to the depuration facility nor for the removal of shellstock from the facility.

(c) Culling. All untreated shellstock prior to, or upon arrival at the facility, shall be thoroughly inspected and culled. All dead shellfish, or shellfish in broken or cracked shells shall be disposed of in a manner approved by the division. The owner or supervisor shall be held responsible for suitable culling, and for the removal and disposal of dead shellfish or shellfish in broken or cracked shells after depuration.

(d) Washing shellstock. Before and after depuration all shellstock shall be thoroughly washed or hosed with water taken from a source approved by the division under Rule .0913 of this Subchapter. Immersion of shellstock for washing purposes is prohibited.

(e) Depuration Baskets. All baskets used in the depuration process shall be made of impervious material and shall not be more than four inches deep. Baskets shall be of a design to allow water to flow freely over the shellstock in the depuration tanks. Shellstock shall not be placed more than three inches deep in the baskets. Baskets shall be stacked in a manner to allow free circulation of water. There shall be at least three inches clearance separating containers of shellfish in tanks and between the containers and the bottom and sides of the tank. Containers used for depuration purposes shall not be used for any other purpose and no containers or other equipment shall be placed in the depuration tanks.

(f) Depuration. All

shellstock upon receipt at the depuration facility, shall be immediately placed in depuration or placed in controlled storage. Shellstock shall be depurated for a period of 48 hours or longer as required to meet the bacteriological standards established in Rule .1209 of this Subchapter.

(g) Washing depuration tanks. After each 24 hours the sea water in the tanks shall be drained out and the shellstock hosed down thoroughly with water from a supply approved by the division under Rule .0913 of this Subchapter. All waste matter must be flushed out of the tank. Immediately after hosing, the tanks shall again be filled with treated sea water.

(h) Scheduled process. A scheduled control purification process shall be established outlining the critical parameters for each depuration facility. This scheduled process shall be written and posted conspicuously at the depuration site.

.1206 SHELLFISH SAMPLING PROCEDURES

(a) Start-up phase. When shellfish are delivered to the depuration facility, the following schedule shall be followed:

(1) One or more shellfish samples (12 or more shellfish per sample) shall be collected for bacterial examination before the shellfish are submitted to the depuration process.

(2) Three or more shellfish samples, randomly selected from three or more locations in each tank, shall be collected for bacterial examination after 24 hours of depuration.

(3) Three or more shellfish samples, randomly selected from three or more locations in each tank, shall be collected for bacterial examination after the shellfish have completed the depuration process.

(b) The above schedule shall be followed until the time that the division and the facility supervisor, after review of the results, determine that the shellfish from the area(s) are responding properly to the depuration process, and that the depuration process is successfully reducing bacterial levels. After the determination, the routine sampling procedures shall be

followed. A routine sampling procedure defining a program of daily sampling shall be established by the division. Written permission from the division must be obtained before the initiation of routine monitoring procedures.

(c) In the event of the installation of a new laboratory, new laboratory equipment, employment of new laboratory personnel, initiation of new laboratory procedures, or the alteration of treatment or procedures, the division may require a reinitiation of the start-up phase procedures until the time that the division and the facility supervisor, after review of the results, determine that the laboratory and depuration procedures are providing satisfactory results. Written permission from the division shall be obtained before routine monitoring procedures are again followed.

.1207 DEPURATION PROCESS WATER CONTROL - SAMPLING PROCEDURES

The treatment of shellfish is a controlled process designed to reduce bacterial contamination to an acceptable level. To insure the continuing effectiveness of the shellfish depuration process, the minimum sampling procedure as described below shall be followed:

- (1) Incoming sea water;
 - (a) type of test: temperature, turbidity, salinity, dissolved oxygen, bacteriological;
 - (b) frequency: each time sea water is withdrawn;
- (2) Tank water;
 - (a) type of test: bacteriological;
 - (b) frequency: once per day per tank.

.1208 DEPURATION TREATMENT PROCESS WATER - STANDARDS

(a) Water Source. Depuration process water shall not exceed fourteen fecal coliform Most Probable Number (MPN) per 100 milliliters of water prior to treatment.

(b) Bacteriological. All water to be used in shellfish depuration tanks shall be subjected to ultraviolet light treatment. The tank water bacterial quality shall not exceed one total coliform Most Probable Number (MPN) per 100 milliliters of water.

(c) Dissolved oxygen. The

amount of dissolved oxygen in the water in the depuration tanks shall be at least five milligrams per liter and shall be measured daily.

(d) Temperature. Depuration tank temperature shall be measured daily during the depuration process. Temperatures of sea water used in the depuration process shall not be below 50°F (10°C) nor above 77°F (25°C).

(e) Turbidity. Turbidity in the depuration water shall not exceed 20 Jackson Turbidity Units or other equivalent methods and shall be measured daily.

(f) Salinity. Salinity of the depuration water shall deviate no more than plus or minus 20% of the value of the harvest area and shall be measured daily.

(g) pH. pH of the depuration water shall range from 7.0 to 8.4 and shall be measured daily.

(h) Metallic ions and compounds. Levels of metallic ions and compounds shall not exceed levels found in approved shellfish harvesting areas and shall be measured if required by the division.

(i) Pesticides, detergents, and radionuclides. Levels of pesticides, detergents, and radionuclides shall not exceed levels found in approved harvesting areas and shall be measured if required by the division.

(j) Marine toxins. Levels of marine toxins in the incoming sea water and in the source water shall not exceed levels found in approved shellfish harvesting areas and shall be measured if required by the division.

.1209 DEPURATION - SHELLFISH MEAT STANDARDS

Shellfish shall not be released for sale if the geometric mean of the fecal coliform MPN of the treated shellfish samples exceeds 20 per 100 grams of sample, or if more than 10 percent of the samples exceed a fecal coliform MPN of 70 per 100 grams of sample, or if any sample fecal coliform MPN exceeds 100 per 100 grams of sample.

(1) The use of the Elevated Temperature Coliform Plate Count is authorized for the bacteriological evaluation of hard clams, Mercenaria species, and soft clam, Mya arenaria.

(2) Should the division

suspect adulteration of shellfish by metallic ions and compounds, pesticides, detergents, radionuclides, marine toxins, or any toxic substance or adulterate, the division shall require that shellfish meats be analyzed for these adulterants before suspect shellfish are released for sale.

.1210 ULTRAVIOLET UNIT

Any ultraviolet unit which provides the required treatment and desired results may be used for the purification of water to be used in the depuration process. The unit shall be designed to deliver, at peak load, at least one gallon per minute of treated water per bushel of shellfish, measured by an approved measuring device or method.

- (1) Cautions and maintenance. Ultraviolet tubes shall be checked for intensity on a monthly basis and shall be replaced when they reach a point of 60 percent efficiency. A log of intensity shall be kept and an orderly numbering procedure for units and bulb established.
- (2) Ultraviolet tubes and reflectors shall be cleaned as necessary. Cleaning may be done with a clean damp cloth or sponge.
- (3) Signs stating "Ultraviolet Light Danger to Eyes - Do Not Look at Bulbs Without Eye Protection" shall be displayed in full view of personnel and authorized visitors. Skin protection, especially for the face and hands, shall be provided for personnel monitoring the bulbs. Eye protection may be accomplished by use of ordinary glasses with solid side pieces or special goggles made for this purpose. Protection for the head may be afforded by a hat and hand protection may be accomplished by the use of gloves. Face protection may be afforded by the use of certain clear plastics.
- (4) An automatic shutoff switch shall be provided to break the electric current, this shutting off the current to the ultraviolet bulb when the lid of the ultraviolet unit is raised.
- (5) A clock, off-on current recorder, or other device approved by the division, shall be installed in line

with all ultraviolet units to measure continuity of operation as well as to measure bulb life.

.1211 SHELLSTOCK STORAGE

(a) Refrigeration of shellstock. Treated shellstock shall be placed in cold storage if they are not released immediately. The temperature for cold storage shall be 50°F (10°C) or lower. A refrigerated storage room shall be provided for depurated shellstock. All untreated shellstock shall be kept in a separate shellstock storage room. Measures shall be taken to prevent the unauthorized removal of any shellstock. All shellstock shall be handled and stored under sanitary conditions in accordance with the rules in this Subchapter.

(b) Controlled storage. Shellstock which is received at the depuration facility which cannot be processed immediately shall be placed in controlled storage. In controlled storage the temperature shall be 50°F (10°C) or lower. A gradual change of temperature from the storage temperature to the depuration water temperature may then be necessary to insure proper treatment. Any shellstock which has been held under refrigeration at a depuration facility for more than 48 hours cannot be depurated.

.1212 DEPURATION - TAGGING AND RELEASE OF SHELLFISH

No shellstock shall be removed from the depuration facility until approved for release by the supervisor of the facility as provided in these Rules. All containers of depurated shellstock shall be tagged before being released from the shellstock depuration facility. The tag shall contain the name and permit number given the depuration facility by the division, the quantity of shellstock, and the date the shellstock were released from the depuration facility.

.1213 DEPURATION - RECORDS

Records containing the following information shall be available at the depuration facility at all times:

- (1) For shellstock presently undergoing the depuration process:
 - (a) name and location of harvesting area(s);
 - (b) depuration harvesting

- permit number(s);
- (c) date received;
- (d) quantity of shellstock in tank(s); and
- (e) date and time of initiation of depuration.
- (2) For each lot of shellstock which have completed the depuration process:
 - (a) name and location of harvesting area(s);
 - (b) depuration harvesting permit number(s);
 - (c) date received into facility;
 - (d) date released from the facility;
 - (e) date and time of initiation of depuration;
 - (f) date and time of termination of depuration;
 - (g) number of hours depurated; and
 - (h) all laboratory results as specified.
- (3) Every two weeks the facility supervisor shall send to the division a copy of the daily records required under this Rule and the results of all shellfish and water samples analyzed during that biweekly period.

SECTION .1300 - WET STORAGE OF SHELLSTOCK

.1301 GENERAL REQUIREMENTS
The rules in Section .0900 shall apply for wet storage of shellstock.

.1302 PLANT DESIGN, SANITATION, AND WET STORAGE

Plant design, sanitation, and wet storage shall be approved by the division.

.1303 WET STORAGE WATER
Water used for wet storage shall be approved by the division.

.1304 SHELLSTOCK CLEANING
Shellstock shall be thoroughly washed with water from an approved source and culled to remove dead, broken, or cracked shellstock prior to wet storage in tanks.

.1305 WET STORAGE TANKS
Wet storage tanks shall be constructed of smooth, impervious materials approved by the division and shall be kept clean.

.1306 SHELLSTOCK CONTAINERS
All containers used during wet storage shall be constructed of non-absorbant and rust-proof

material, and shall be kept clean.

.1307 RECORD KEEPING

Records of all shellstock held in wet storage shall be kept as required by the division.

SUBCHAPTER 10C - SOLID WASTE AND VECTOR CONTROL

SECTION .0500 STANDARDS FOR SPECIAL TAX TREATMENT OF RECYCLING AND RESOURCE RECOVERY EQUIPMENT AND FACILITIES

.0509 APPEALS (REPEALED)

.0514 APPEALS PROCEDURE
Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SECTION .0700 ANNUAL FEES FOR HANDLES OF HAZARDOUS WASTE

.0703 APPEALS (REPEALED)

.0705 APPEALS PROCEDURE
Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.

SUBCHAPTER 10D -WATER SUPPLIES

SECTION .0800 - LOCATION OF SOURCES OF PUBLIC WATER SUPPLIES

.0801 SURFACE SUPPLIES FOR COMMUNITY WATER SYSTEMS

(e) The water source shall have an ~~A-I~~ WS-I classification as established by the Environmental Management Commission and shall meet the quality standards for that classification.

.0802 REMOVAL OF DISSOLVED MATTER AND SUSPENDED MATTER

Any surface water which is to receive treatment for removal of dissolved matter and or suspended matter in order to be used for a community water system shall be obtained from a source which meets the ~~A-I~~ A-II ~~or~~ WS-I, WS-II or WS-III stream classification standards established by the Environmental Management Commission and shall be properly protected from objectionable sources of pollution as determined by a sanitary survey of the watershed made by an authorized representative of the

department. The source supply shall be sufficient in capacity to satisfy the anticipated needs of the users for the period of design.

SECTION .1100 - OPERATION OF PUBLIC WATER SUPPLIES

.1102 OPERATION OF FILTERED COMMUNITY WATER SYSTEMS

(a) Operator in Charge.

The person in responsible charge of operation of a community water system filtration plant where raw water is obtained from a class A-I or A-II WS-I, WS-II or WS-III stream as classified by the division of environmental management and removal of dissolved matter or suspended matter is required shall hold an appropriate valid certificate issued by the North Carolina Drinking Water Treatment Facility Operators Certification Board.

SECTION .1200 - PROTECTION OF UNFILTERED PUBLIC WATER SUPPLIES

.1209 AQUATIC WEED CONTROL

The rule governing aquatic weed control in Rule .1313 shall also apply to this Section.

SECTION .1300 - PROTECTION OF FILTERED WATER SUPPLIES

.1306 UNTREATED DOMESTIC SEWAGE OR INDUSTRIAL WASTES

No untreated domestic sewage or industrial wastes or by-products shall be discharged into any public water supply reservoir or stream classified as A-II. No hazardous waste or industrial by-products shall be stored in the watershed of an A-II stream unless precautions are taken to prevent its being spilled into or otherwise entering the raw water supply. No wastewater treatment plant effluent shall be discharged into any public water supply reservoir or stream classified as A-II without approval of the Division of Health Services. No treated or untreated domestic sewage, treated or untreated industrial waste or by-products shall be stored on the watershed of or discharged into any public water supply reservoir or stream tributary to that reservoir whose waters are classified WS-I. No untreated domestic sewage or industrial waste by-products shall be discharged into any public water supply reservoir or stream classified as WS-II or WS-III. No

hazardous waste, industrial by-products, treated or untreated domestic sewage shall be stored in the watershed of a Class I or Class II water supply reservoir, without the approval of the Division of Health Services. No hazardous waste or industrial by-products shall be stored in the watershed of a Class WS-II or Class WS-III stream unless precautions are taken to prevent its being spilled into or otherwise entering the raw water supply. No wastewater treatment plant effluent shall be discharged into any public water supply reservoir or stream classified as WS-II or WS-III without the approval of the Division of Health Services.

.1312 SEPTIC TANK SYSTEMS (REPEALED)

.1313 AQUATIC WEED CONTROL

(a) Herbicides for aquatic weed control shall not be added to bodies of water that serve as sources of supply for community water systems until a formal application has been submitted to an written approval is granted by the Division of Health Services.

(b) The complete written application for approval shall be submitted to the division at least 60 days prior to the intended date of herbicide application.

(c) As a minimum, the application shall include the following:

- (1) The name, location, and owner of the water body involved;
- (2) The person or agency responsible for the application of herbicide;
- (3) Name(s) and license number(s) of aquatic pesticide applicator(s) who will perform the application;
- (4) An explanation of why the treatment is needed;
- (5) The specie(s) of aquatic weed to be controlled;
- (6) A description of alternative control methods considered;
- (7) Detailed description of the chosen alternative;
- (8) The generic chemical name and brand name with attached photo copy of the label, summary if toxicological data, and use restrictions provided by the manufacturer of the herbicide(s) to be used;
- (9) The dosage (rate) and

method of application provided;

(10) The proposed date (s) of application;

(11) A plan for the monitoring of the water source before and after application;

(12) Assurance of the adequacy and availability of an alternate source of potable water during any waiting period specified for use of the proposed herbicide which shall include the name and location of the alternate source which source must be approved by the division.

(d) The chemical to be used must be one which has been approved for use in potable water supplies by the United States Environmental Protection Agency and the Commission for Health Services and for which a tolerance level has been approved by EPA. An analytical method which can be performed by the Division of Health Services' lab must exist.

.1314 GROUND ABSORPTION SEWAGE COLLECTION: TREATMENT AND DISPOSAL SYSTEMS

(a) No facility, including but not limited to a residence, mobile home, mobile home park, multi-unit building or dwelling, place of business or place of public assembly on a lot located on a watershed of a class I or class II reservoir or on the watershed of the portion of a stream classified as WS-I, WS-II or WS-III extending from a class I reservoir to a downstream intake of a water purification plant shall use a ground absorption sewage disposal system unless all of the following criteria are met:

(1) The lot includes at least 40,000 square feet, except as provided in Subparagraphs (a)(2) and (a)(3);

(2) The lot shall include enough total area to equal an average of 40,000 square feet per residential dwelling unit for a multiple unit residential building or mobile home park;

(3) The lot shall include enough total area to equal an average of 40,000 square feet per each 1250 gallons of wastewater generated each day for a multiple unit place of business or place of public assembly. The anticipated wastewater generated shall be

determined in accordance with 10 NCAC 10A .1949;

(4) The lot size requirement shall be determined by excluding streets and public utility rights-of-way; and

(5) All other requirements of applicable state and local rules and laws have been met.

(b) The Director of the Division of Health Services or his authorized representative, shall have authority, when special local factors permit or require it in order to protect the public health adequately and to ensure proper health and sanitary conditions, to increase the lot size requirements in particular cases upon a determination based on any of the following factors:

(1) size of the reservoirs;

(2) quantities and characteristics of the wastes;

(3) type of business, use, or activity;

(4) coverage of lot area by structures, parking lots and other improvements; and

(5) type and location of the water supply.

(c) The requirements of this Rule do not apply to those portions of a water supply reservoir watershed which are drained by class B or class C streams. These requirements become effective whenever funds have been appropriated either for purchase of land or for construction of a class I or class II reservoir.

SECTION .1600 - WATER QUALITY STANDARDS

.1625 INORGANIC CHEMICAL SAMPLING AND ANALYSIS

(a) Analyses for the purpose of determining compliance with Rule .1616,

.1619, .1620, and .1621(a) of this Section are required as follows:

.1631 REPORTING REQUIREMENTS

(c) The supplier of water is not required to report analytical results in cases where a state laboratory performs the analysis and reports the results to the department. When a certified laboratory analyzes a compliance sample for a supplier of water the certified laboratory shall report the results within the required periods of (a) and (b) to both the department and to the supplier of water or his designated representative. The

reports shall be on a form acceptable to the department and shall contain all essential information. When a certified laboratory fails to report a compliance sample result it shall be the responsibility of the supplier of water to report results to the department as required by this Rule.

SECTION .2600 - LOCAL PLAN APPROVAL

.2603 CERTIFICATION

The department shall certify a local approval program which satisfies the requirements of G.S. 130A-317(d). The requirements of G.S. 130A-317(d)(4) are satisfied when a local approval program provides by ordinance or local law for enforcement provisions equivalent to G.S. 130A-18 and G.S. 130A-25. The requirements of G.S. 130A-317(d)(5) are satisfied when a local approval program has a minimum staff and other resources of: a designer who is a professional engineer registered in this state and who will devote full time to local approval program duties; a designer who is a professional engineer registered in this State and whose duty is to devote the time necessary for an effective local approval program; a technical staff, budget, equipment and facilities sufficient to support a design engineering office; and an organizational structure sufficient to carry out this purpose.

SUBCHAPTER 10F - HAZARDOUS WASTE MANAGEMENT

.0002 DEFINITIONS

(a) The definitions contained in 45 Fed. Reg. 33,073 to 33,076 (1980) [to be codified in 40 CFR 260.10 (Subpart B)]; 45 Fed. Reg. 33,419 to 33,424 (1980); (to be codified in 40 CFR 270.2); and 45 Fed. Reg. 33,486 (1980) [to be codified in 40 CFR 124.2] have been adopted by reference as amended by 45 Fed. Reg. 72,028, 76,075, 76,630, and 86,968 (1980); 46 Fed. Reg. 2,348 (1981); 47 Fed. Reg. 32,349 (1982); 48 Fed. Reg. 2,511, and 30,115 (1983); 49 Fed. Reg. 10,500 (1984); and 50 Fed. Reg. 661 and 18,374 (1985); and 51 Fed. Reg. 10,174, and 16,443, 25,470, and 25,471 (1986) [to be codified in 40 CFR 260.10 (Subpart B)], 45 Fed. Reg. 76,075, 76,630, and 86,968; 46 Fed. Reg. 2,348

(1981); 47 Fed. Reg. 4,996 (1982); and 48 Fed. Reg. 14,230 to 14,231 (to be codified in 40 CFR 270.2).

.0029 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

(a) The general provisions contained in 45 Fed. Reg. 33,119 to 33,121 (1980) [to be codified in 40 CFR 261.1 to 261.6 (Subpart A)] have been adopted by reference as amended by 45 Fed. Reg. 72,028, 72,037, 76,620, 76,623, 76,624, and 78,531 (1980); 46 Fed. Reg. 56,588, 56,589, 47,429, 44,972, 44,973 (1981); 48 Fed. Reg. 2,532, 14,293, 14,294, and 30,115 (1983); 49 Fed. Reg. 23,287, and 44,980 (1984); and 50 Fed. Reg. 663, 664, 665, 1,999, 14,219, 28,743, 28,744, 49,202, 49,203, and 33,542, (1985); and 51 Fed. Reg. 10,174, and 10,175, and 25,472 (1986).

(e) The "Lists of Hazardous Wastes" and the accompanying appendices (I through VIII) contained in 45 Fed. Reg. 33,122 to 33,137 (1980) [to be codified in 40 CFR 261.30 to 261.33 (Subpart D)] have been adopted by reference as amended by 45 Fed. Reg. 72,032 to 72,304, 74,890, 74,892, and 74,894 (1980); 46 Fed. Reg. 78,529, 78,537 to 78,544, 4,614, to 4,620 (1981); 49 Fed. Reg. 5,312, 19,923 (1984); and 50 Fed. Reg. 662, 665, and 2,000 and 28,744 (1985). Supplemental material contained in 45 Fed. Reg. 47,833, and 47,834 (1980); 46 Fed. Reg. 35,247 to 35,249 (1981); and 48 Fed. Reg. 14,294, and 15,256 to 15,258 (1983) have also been adopted by reference as amended by 50 Fed. Reg. 1999, 2001, 2002, and 2003, 14,219, 42,942, and 42,943, and 53,319 (1985); and 51 Fed. Reg. 2,702, 6,541, 6,542, 5,330, and 10,175, and 19,322 (1986).

.0030 STANDARD FOR HAZARDOUS WASTE GENERATORS - PART 262

(c) "Pre-Transport Requirements" contained in 45 Fed. Reg. 33,143, and 33,144 (1980) [to be codified in 40 CFR 262.30 to 262.34 (Subpart C)] have been adopted by reference as amended by 45 Fed. Reg. 76,626 (1980); 47 Fed. Reg. 1,251 (1982); 48 Fed. Reg. 14,294 (1983); and 49 Fed. Reg. 49,571 and 49,572 (1984); and 51 Fed. Reg. 10,175, and 10,176 and 25,472 (1986).

.0032 STANDARDS FOR OWNERS/

OPERATORS OF HWMF's - PART 264

(c) "General Facility Standards" contained in 45 Fed. Reg. 33,222 to 33,224 (1980) [to be codified in 40 CFR 264.10 to 264.18 (Subpart E)] have been adopted by reference as amended by 46 Fed. Reg. 2,848, 2,849, 2,874, and 7,678 (1981); 47 Fed. Reg. 32,349 and 32,350 (1982); 48 Fed. Reg. 14,294 (1983); 50 Fed. Reg. 18,374 and 28,746 (1985); and 51 Fed. Reg. 25,472 (1986).

(f) The provisions for "Manifest System, Recordkeeping, and Reporting" and accompanying appendices contained in 45 Fed. Reg. 33,226 to 33,232 (1980) [to be codified in 40 CFR 264.70 to 264.78 (Subpart E)] have been adopted by reference as amended by 45 Fed. Reg. 86,970 and 86,974 (1980); 46 Fed. Reg. 2,849 and 7,678 (1981); 47 Fed. Reg. 32,350 (1982); 48 Fed. Reg. 3,982 (1983); 50 Fed. Reg. 18,374 and 28,746 (1985); and 51 Fed. Reg. 25,472 (1986).

(h) The provisions for "Closure and Post-Closure" contained in 46 Fed. Reg. 2,849 to 2,851, and 7,678 (1981) [to be codified in 40 CFR 264.110 to 264.120 (Subpart G)] have been adopted by reference as amended by 47 Fed. Reg. 32,356, 32,357 (1982); as amended by 48 Fed. Reg. 14,294 (1983); and 51 Fed. Reg. 16,444 to 16,447, 25,472, (1986); except that 40 CFR 264.120(b) is rewritten as follows: "If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may add a notation on the deed to the facility property or other instrument normally examined during title search, indicating the removal of the waste."

(i) "Financial Requirements" contained in 46 Fed. Reg. 2,851 to 2,866 and 7,678 (1981) [to be codified in 40 CFR 264.140 to 264.151 (Subpart H)] have been adopted by reference as amended by 47 Fed. Reg. 15,047 to 15,064 and 16,554 to 16,558, and 32,357 (1982) and 48 Fed. Reg. 30,115 (1983), and 51 Fed. Reg. 16,447 to 16,451, 25,472, (1986), except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.147(a), 40 CFR 264.147(b), and 40 CFR 264.151(a)(1),

Section 15, are not adopted by reference.

(1) The following shall be substituted for the provisions of 40 CFR 264.143(a)(3) which were not adopted by reference:

"The owner or operator must deposit the full amount of the closure cost estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this section."

(2) The following shall be substituted for the provisions of 40 CFR 264.43(a)(4) which were not adopted by reference:

"Deleted"

(3) The following shall be substituted for the provisions of 40 CFR 264.143(a)(5) which were not adopted by reference:

"Deleted"

(4) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) which were not adopted by reference:

"After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference."

(5) The following shall be substituted for the provisions of 40 CFR 264.145(a)(3) which were not adopted by reference:

"The owner or operator must deposit the full amount of the post-closure cost

estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a post-closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or shall obtain other financial assurance as specified in this section."

(6) The following shall be substituted for the provisions of 40 CFR 264.145(a)(4) which were not adopted by reference:
"Deleted"

(7) The following shall be substituted for the provisions of 40 CFR 264.145(a)(5) which were not adopted by reference:
"Deleted"

(8) The following shall be substituted for the provisions of 40 CFR 264.145(a)(6) which were not adopted by reference:
"After the trust fund is established, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference."

(9) The following shall be substituted for the provisions of 40 CFR 264.151(a)(1), Section 15, which were not adopted by reference:
"Section 15. Notice of Payment. The trustee shall notify the EPA Regional Administrator of payment to the trust fund, by certified mail with ten (10) days following said payment to the trust fund. The notice shall contain the name of

the Grantor, the date of payment, the amount of payment, and the current value of the trust fund."

(10) Section 264.141 is amended by adding a new paragraph (h) to read as follows:

"(h) 'Branch' means the Solid and Hazardous Waste Management Branch of the North Carolina Department of Human Resources."

(11) The following shall be substituted for the provisions of 40 CFR 264.147(a), which was not adopted by reference:
"Section 264.147 Liability requirements."

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in Section 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in Section 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Branch. If requested by the Branch,

the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraphs (f) and (h) of this section.

(3) Liability trust fund.

(i) An owner or operator may demonstrate the required liability coverage by establishing a sudden accidental occurrences liability trust fund which conforms to the requirements of this paragraph and by submitting an originally signed duplicate of the trust agreement to the Branch at least 60 days before the date of which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(ii) The wording of the trust agreement must be identical to the wording specified in Section 264.151(k)(1), and the trust agreement must be accompanied by a formal certification of

acknowledgement [for example, see Section 264.151(k)(2)].

(iii) On the date of the initial establishment of the sudden accidental occurrences liability trust fund, the value of the fund shall be at least two million dollars (\$2,000,000), or such other amount as required by the Branch pursuant to Section 264.147(c) or (d).

(iv) if an owner or operator substitutes other financial assurance as specified in this section for all or part of the sudden accidental occurrences liability trust fund, he may submit a written request to the Branch for release of the amount in the trust fund in excess of the amount of the required coverage to be demonstrated by the sudden accidental occurrences liability trust fund.

(v) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the sudden accidental occurrences liability trust fund in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record, that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time

allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or

b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(vi) After receiving the material described in Section 264.147(a)(3)(v) above, the Trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.

(vii) No trust shall be terminated without prior written consent of the Branch. The Branch may agree to termination of the trust when it has determined that the owner or operator has substituted alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 264.115."

(12) Section 264.147(a) is amended by adding a new paragraph (4) to read as follows: "(4) Surety bond guaranteeing payment into a sudden accidental occurrences liability trust fund.

(i) An owner or operator may demonstrate the required coverage by obtaining a surety bond which conforms to the requirements of this paragraph and by submitting the surety bond to the Branch. An owner or operator of a new facility must submit the bond to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable

sureties on Federal bonds in Circular 570 of the U. S. Department of Treasury.

(ii) The wording of the surety bond must be identical to the wording specified in Section 264.151(1).

(iii) The owner or operator who uses a surety bond to satisfy the requirements of Section 264.147(a) shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder shall, in accordance with instructions from the Branch, be deposited by the surety directly into the standby trust fund. This standby trust shall meet the requirements in Section 264.147(a)(3), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Branch with the surety bond; and

b. Until the standby trust fund is funded pursuant to the requirements of Section 264.147(a)(4)(viii), the following are not required: (i) payment into the trust fund as specified in Section 264.147(a)(3)(iii); (ii) annual valuations as required by the trust agreement [see 264.151(k)(1) Section 10]; and (iii) notices of nonpayment as required by the trust agreement [see 264.151(k)(1) Section 15].

(iv) The bond shall guarantee that the owner or operator shall:

a. Fund the standby trust fund in an amount equal to either the sum of the judgment or settlement described in Section 264.147(a)(4)(vii) and the costs of administering said fund, or the amount of the penal sum, whichever is less, within fifteen (15) days after the Branch or a court of competent jurisdiction

issues an order to that effect; or

b. Provide alternate financial assurance as specified in this section, and obtain the branch's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and by the Branch of a notice of cancellation of the surety bond from the surety.

(v) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator does not perform as guaranteed by the bond.

(vi) The penal sum of the bond shall be at least two million dollars (\$2,000,000), or such other amount as required by the Branch pursuant to Section 264.147(c) or (d).

(vii) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the surety bond, he may submit a written request to the Branch for release of the amount of the penal sum of the bond in excess of the amount of the required coverage to be demonstrated by the surety bond.

(viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the surety bond in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in

the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or

b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(ix) After receiving the material described in Section 264.147(a)(4) (viii) above, the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the owner or operator to pay to the trustee such amounts, not to exceed the amount of the judgment or settlement, and the costs of administering said fund, or the amount of the required coverage, whichever is less. If the owner or operator fails to perform as required by the Branch's instructions, the Branch shall instruct the surety to place funds in the amount guaranteed for the facility(ies) into the standby trust fund. The trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.

(x) Under the terms of the bond, the surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and to the Branch. Cancellation may not take effect, however, until at least one hundred twenty (120) days after the date of receipt of the notice of

cancellation by both the owner or operator and the Branch, as shown by the latter return receipt.

(xi) No bond shall be cancelled without prior written consent of the Branch. The Branch may agree to cancellation of the bond when it has determined that the owner or operator has substituted alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 264.115."

(13) Section 264.147(a) is amended by adding a new paragraph (5) to read as follows: "(5) Letter of credit.

(i) An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which conforms to the requirements of this paragraph and by submitting the letter to the Branch. An owner or operator of a new facility must submit the letter of credit to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(ii) The wording of the letter of credit shall be identical to the wording specified in Section 264.151(m).

(iii) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall,

in accordance with instructions from the Branch, be deposited by the issuing institution directly into the standby trust fund. This standby trust fund shall meet the requirements in Section 264.147(a)(3), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Branch with the letter of credit; and

b. Until the standby trust fund is funded pursuant to the requirements of Section 264.147(a)(5)(ix), the following are not required: (i) payment into the trust fund as specified in Section 264.147(a)(3)(iii); (ii) annual valuations as required by the trust agreement [see 264.151(k)(1) Section 10]; and (iii) notices of nonpayment as required by the trust agreement [see 264.151(k)(1), Section 15].

(iv) The letter of credit shall be accompanied by a letter from the owner or operator which shall state:

a. The letter of credit number;
b. The name of the issuing institution;
c. The date of issuance of the letter of credit;
d. The EPA identification number(s) of the facility(ies);
e. The name(s) and address(es) of the facility(ies); and
f. The amount of funds assured by the letter of credit.

(v) The letter of credit shall be irrevocable and shall be issued for a period of at least one year unless at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the Branch by certified mail of a decision not to extend the expiration

date. Under the terms of the letter of credit, the one hundred and twenty (120) days will begin on the date when both the owner or operator and the Branch have received the notice, as shown by the latter return receipt.

(vi) The letter of credit shall be issued in an amount at least two million dollars (\$2,000,000), or such other amount as required by the Branch pursuant to Section 264.147(c) or (d).

(vii) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the amount of the letter of credit, he may submit a written request to the Branch for release of the amount of the letter of credit in excess of the amount of required coverage to be demonstrated by the letter of credit.

(viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable

statute or rule, or (3) agreed to by the owner or operator; or

b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(ix) After receiving the material described in Section 264.147(a)(5)(viii) above, the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the institution issuing the letter of credit to pay to the Trustee such amounts, not to exceed the amount of the judgment or settlement, and the costs of administering said fund, or the amount of the required coverage, whichever is less. The Trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of funds in the trust.

(x) If the owner or operator does not establish alternate financial assurance as required by this section and does not obtain written approval from the Branch of any such alternate financial assurance within ninety (90) days of receipt by both the owner or operator and by the Branch of a notice that the issuing institution will not extend the letter of credit beyond the current expiration date, the Branch shall draw on the letter of credit. The Branch may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Branch shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified

in this section or has failed to obtain written approval by the Branch of such assurance.

(xi) No letter of credit shall be terminated without prior written consent of the Branch. The Branch may return the letter of credit to the issuing institution for termination when the Branch has determined that the owner or operator has substituted alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 264.115.

(14) Section 264.147(a) is amended by adding a new paragraph (6) to read as follows: "(6) Use of multiple financial mechanisms. An owner or operator may demonstrate the required liability coverage by establishing more than one financial mechanism as specified in this section. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (1), (3), (4), and (5) of this section, except that it is the combination of the mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least two million dollars (\$2,000,000). If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Branch may use any and all of the mechanisms to provide for sudden accidental occurrences liability coverage for the facility."

(15) The following shall be substituted for the provisions of 40 CFR 264.147(b), which was not adopted by reference: "(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment,

landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate Liability Insurance. The wording of the endorsement must be identical to the wording specified in Section 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in Section 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Branch. If requested by the Branch, the owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraphs (f) and (h) of this section.

(3) Liability trust fund.

(i) An owner or operator may demonstrate the required liability coverage by establishing a nonsudden accidental occurrences liability trust fund which conforms to the requirements of this paragraph and by submitting an originally signed duplicate of the trust agreement to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(ii) The wording of the trust agreement must be identical to the wording specified in Section 264.151(k)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment [for example, see Section 264.151(k)(2)].

(iii) On the date of the initial establishment of the nonsudden accidental occurrences liability trust fund, the value of the fund shall be at least six million dollars (\$6,000,000), or such other amount as required by the Branch pursuant to Section 264.147(c) or (d).

(iv) If an owner or operator substitutes other financial

assurance as specified in this section for all or part of the nonsudden accidental occurrences liability trust fund, he may submit a written request to the Branch for release of the amount in the trust fund in excess of the amount of the required coverage to be demonstrated by the nonsudden accidental occurrences liability trust fund.

(v) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the nonsudden accidental occurrences liability trust fund in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or
b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(vi) After receiving the material described in Section 264.147(b)(3)(v) above, the Trustee shall

pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.

(vii) No trust shall be terminated without prior written consent of the Branch. The Branch may agree to termination of the trust when it has determined that the owner or operator has substituted alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 264.115."

(16) Section 264.147(b) is amended by adding a new paragraph (4) to read as follows: "(4) Surety bond guaranteeing payment into a nonsudden accidental occurrences liability trust fund.

(i) An owner or operator may demonstrate the required coverage by obtaining a surety bond which conforms to the requirements of this paragraph and by submitting the surety bond to the Branch. An owner or operator of a new facility must submit the bond to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of Treasury.

(ii) The wording of the surety bond must be identical to the wording specified in Section 264.151(1).

(iii) The owner or operator who uses a surety bond to satisfy the requirements of Section 264.147(b) shall also establish a standby trust fund. Under the terms of the surety

bond, all payments made thereunder shall, in accordance with instructions from the branch be deposited by the surety directly into the standby trust fund. This standby trust shall meet the requirements in Section 264.147(b)(3), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the branch with the surety bond; and

b. Until the standby trust fund is funded pursuant to the requirements of Section 264.147(b)(4)(iv), the following are not required: (i) payment into the trust fund as specified in Section 264.147(b)(3)(iii); (ii) annual valuations as required by the trust agreement [see 264.151(k)(1) Section 10]; and (iii) notices of nonpayment as required by the trust agreement [see 264.151(k) (1) Section 15].

(iv) The bond shall guarantee that the owner or operator shall:

a. Fund the standby trust fund in an amount equal to either the sum of the judgment or settlement described in Section 264.147(b)(4)(vii) and the costs of administering said fund, or the amount of the penal sum, whichever is less, within fifteen (15) days after the Branch or a court of competent jurisdiction issues an order to that effect; or

b. Provide alternate financial assurance as specified in this section, and obtain the Branch's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and by the Branch of a notice of cancellation of the surety bond from the surety.

(v) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator

does not perform as guaranteed by the bond.

(vi) The penal sum of the bond shall be at least six million dollars (\$6,000,000), or such other amount as required by the Branch pursuant to Section 264.147(c) or (d).

(vii) if an owner or operator substitutes other financial assurance as specified in this section for all or part of the surety bond, he may submit a written request to the Branch for release of the amount of the penal sum of the bond in excess of the amount of the required coverage to be demonstrated by the surety bond.

(viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the surety bond in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or

b. in the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(ix) After receiving the material described in Section 264.147(b) (4)(viii) above, the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the owner or operator to pay to the trustee such amounts, not to exceed the amount of the judgment or settlement and the costs of administering said fund, or the amount of the required coverage, whichever is less. If the owner or operator fails to perform as required by the Branch's instructions, the Branch shall instruct the surety to place funds in the amount guaranteed for the facility(ies) into the standby trust fund. The trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.

(x) Under the terms of the bond, the surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and to the Branch. Cancellation may not take effect, however, until at least one hundred twenty (120) days after the date of receipt of the notice of cancellation by both the owner or operator and the Branch, as shown by the latter return receipt.

(xi) No bond shall be cancelled without prior written consent of the Branch. The Branch may agree to cancellation of the bond when it has determined that the owner or operator has substituted alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 264.115.

(17) Section 264.147(b)

is amended by adding a new paragraph (5) to read as follows: "(5) Letter of credit.

(i) An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which conforms to the requirements of this paragraph and by submitting the letter to the Branch. An owner or operator of a new facility must submit the letter of credit to the Branch at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State Agency.

(ii) The wording of the letter of credit shall be identical to the wording specified in Section 264.151(m).

(iii) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall, in accordance with instructions from the Branch, be deposited by the issuing institution directly into the standby trust fund. This standby trust fund shall meet the requirements in Section 264.147(b)(3), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Branch with the letter of credit; and

b. Until the standby trust fund is funded pursuant to the requirements of 264.147(b)(5)(ix), the following are not required: (1) payment

into the trust fund as specified in Section 264.147(b)(3)(iii); (ii) annual valuations as required by the trust agreement [see 264.151(k)(1) Section 10]; and (iii) notices of nonpayment as required by the trust agreement [see 264.151(k)(1) Section 15].

(iv) The letter of credit shall be accompanied by a letter from the owner or operator which shall state:

a. The letter of credit number;

b. The name of the issuing institution;

c. The date of issuance of the letter of credit;

d. The EPA identification number(s) of the facility(ies);

e. The name(s) and address(es) of the facility(ies); and

f. The amount of funds assured by the letter of credit.

(v) The letter of credit shall be irrevocable and shall be issued for a period of at least one year unless at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the Branch by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred and twenty (120) days will begin on the date when both the owner or operator and the Branch have received the notice, as shown by the latter return receipt.

(vi) The letter of credit shall be issued in an amount at least six million dollars (\$6,000,000), or such other amount as required by the Branch pursuant to Section 264.147(c) or (d).

(vii) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the amount of

the letter of credit, he may submit a written request to the Branch for release of the amount of the letter of credit in excess of the amount of required coverage to be demonstrated by the letter of credit.

(viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or

b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(ix) After receiving the material described in Section 264.147(b)(5)(viii), the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the institution issuing the letter of credit to pay to the Trustee such amounts, not to exceed the amount of the

judgment or settlement and the costs of administering said fund, or the amount of the required coverage, whichever is less. The Trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of funds in the trust.

(x) If the owner or operator does not establish alternate financial assurance as required by this section and does not obtain written approval from the Branch of any such alternate financial assurance within ninety (90) days of receipt by both the owner or operator and by the Branch of a notice that the issuing institution will not extend the letter of credit beyond the current expiration date, the Branch shall draw on the letter of credit. The Branch may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Branch shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section or has failed to obtain written approval by the Branch of such assurance.

(xi) No letter of credit shall be terminated without prior written consent of the Branch. The Branch may return the letter of credit to the issuing institution for termination when the Branch has determined that the owner or operator has substituted alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 264.115.

(18) Section 264.147(b)

is amended by adding a new paragraph (6) to read as follows: "(6) Use of multiple financial mechanisms.

An owner or operator may demonstrate the required liability coverage by establishing more than one financial mechanism as specified in this section. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (1), (3), (4), and (5) of this section, except that it is the combination of the mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least six million dollars (\$6,000,000). If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Branch may use any and all of the mechanisms to provide for sudden accidental occurrences liability coverage for the facility.

(19) Section 264.147 is amended by adding a new paragraph (h) to read as follows: "(h) Corporate guarantee for liability coverage.

(1) Subject to subparagraph (2), an owner or operator may meet the requirements of this section by obtaining a written guarantee hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator as defined in Section 264.140(d). The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (7) of this section. The wording of the corporate guarantee must be identical to the wording specified in Section 264.15(n). A certified copy of the corporate guarantee must accompany the items sent to the Branch as specified in paragraph (f)(3) of this Section.

The terms of the corporate guarantee must provide that:

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury and/or property damage caused by sudden or nonsudden accidental occurrences (or both, as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to rise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Branch. This guarantee may not be terminated unless and until the Branch approves alternate liability coverage complying with Section 264.147 and/or 265.147.

(2) A Corporate guarantee may be used to satisfy the requirements of this section if it is a legally valid and enforceable obligation in the State of North Carolina."

(20) Section 264.147 is amended by adding a new paragraph (i) to read as follows:

"(i) Notice of claim. The owner or operator of each facility shall give written notice to the Branch of every claim for bodily injury and/or property damage caused by a sudden and/or nonsudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall give such notice to the Branch as soon as possible and in any event no later than thirty (30) days after learning of such claim. The owner or operator of each facility shall give

written notice to the branch of every judgment against the owner or operator for bodily injury and/or property damage caused by a sudden or nonsudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall give such notice to the Branch as soon as possible and in any event no later than thirty (30) days after learning of said judgment. The owner or operator of each facility shall submit to the branch a copy of every judgment against the owner or operator for bodily injury and/or property damage caused by a sudden and/or nonsudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall submit a copy of such judgment to the Branch as soon as possible and in any event no later than thirty (30) days after receiving a copy thereof."

(21) Section 264.147

is amended by adding a new paragraph (j) to read as follows: "(j) continuous coverage. An owner or operator must continuously provide liability coverage for a facility as required by this section until notified that he is no longer required to maintain liability coverage for that facility in accordance with Section 264.147(c). If the owner or operator fails to submit evidence of liability coverage as required by Section 264.147 and to obtain from the Branch approval of such coverage before the expiration of the current liability coverage, the owner or operator shall cease treatment, storage, or disposal of hazardous waste at the facility until liability coverage is demonstrated to and approved by the Branch."

(22) Section 264.151 is

amended by adding a new paragraph (k) to read as follows:

"(k)(1) A trust agreement for a trust fund, as specified in Sections 264.147(a)(3) or 264.147(b)(3) or 265.147(a)(3) or 265.147(b)(3) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

This Trust Agreement, hereafter referred to as the "Agreement," is entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," "trust," or "individual"], hereafter referred to as the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of " or "a national bank"], hereafter referred to as the "Trustee."

Whereas the Solid and hazardous Waste Management Branch of the Department of Human Resources hereafter referred to as the "Branch," an agency of the State of North Carolina, has established certain regulations applicable to the Grantor, requiring that the Grantor shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by each sudden accidental occurrence and/or each nonsudden accidental occurrence arising from operation of the facility identified in Schedule A; and

Whereas, the Grantor has elected to establish a [insert either "trust fund" or "standby trust fund"] to demonstrate all or part of such financial responsibility for the facility(ies) identified in Schedule A; and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

(a) The term "Grantor" means [name of the owner or operator].

(b) The term "Trustee" means [name of corporate trustee], [insert "incorporated

in the State of "or "a national bank"]], and any successor thereof.

(c) The term "Branch" means the Solid and Hazardous Waste Management Branch of the Department of Human Resources, an agency of the State of North Carolina, and any successor of the said Branch.

(d) The term "Beneficiary" means any third party suffering bodily injury and/or property damage caused by sudden and/or nonsudden accidental occurrences arising from operations of the hazardous waste treatment, storage, or disposal facility(ies), who obtains final judgment or settlement against the Grantor.

Section 2. Identification of Facilities.

This Agreement pertains to the facilities identified on the attached Schedule A [on attached Schedule A list each facility and for each facility list the identification number, name, and address for which financial responsibility is demonstrated by this Agreement].

Section 3. Establishment of Trust Fund. The Grantor and the Trustee hereby establish a trust fund (the "Fund") for the benefit of the Beneficiary. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in the attached Schedule B. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor.

Section 4. Payment for Bodily Injury and Property Damage to Third Parties.

The Trustee shall make payments from the Fund in accordance with Section 264.147 or 265.147 of 10 NCAC 10F .0032(i) or .0033(h). Said payments shall provide for payments from the Fund to persons for bodily injury and/or

property damage caused by each sudden accidental occurrence and/or each nonsudden accidental occurrence arising from operation of the facility(ies) covered by this Agreement. Upon payment, such funds shall no longer constitute part of the Fund as defined herein. The Trustee shall, within ten days of disbursement from the fund, provide written notice to the Branch of such disbursement.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash, securities, or other assets acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the principal and income of the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any affiliates of the Grantor, as defined in the Investment Company Act of 1940, as amended, 14 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for

a reasonable time and without liability for the payment of interest thereon.
Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 14 U.S.C. 80a-1 et. seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary

capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund. If any disbursements under this section cause the fund to fall below \$ [required coverage], the trustee shall, within ten days of disbursement from the fund, provide written notice to the Branch of such disbursement.

Section 10. Annual Valuation. The Trustee shall annually, no later than December 1, furnish to the Grantor and to the Branch a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no later than November 1. The failure of the

Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the Branch shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may, from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the interpretation of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Branch, and the present Trustee by certified mail at least ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule C or such other designees as the Grantor may designate by amendment to Schedule C. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Branch to the Trustee shall be in writing, signed by the Branch Head or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or Branch hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or Branch, except as provided for herein.

Section 15. Notice of Nonpayment. The trustee shall notify the Grantor and the Branch by certified mail by no later than February 10 if no payment into the Fund is received from the Grantor during the month of January.

Section 16. Amendment of Agreement. This Agreement may be amended by an instruction in writing executed by the Grantor, the Trustee, and the Branch, or by the Trustee and the Branch if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated by the written agreement of the Grantor, the Trustee, and the Branch, or by the Trustee and the Branch, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of the Trust, or in carrying out any

directions by the Grantor or by the Branch issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of North Carolina.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above. The parties below certify that the wording of this Agreement is identical to the wording specified in Section 264.151(k)(1) of 10 NCAC 10F .0032(i) as in effect on the date first written above.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is

an example of the certification of acknowledgment which must accompany a trust agreement for a trust fund as required by Sections 264.147(a)(3)(ii) or 264.147(b)(3)(ii) or 265.147(a)(3)(ii) or 265.147(b)(3)(ii).

State of [Name of State]

County of [Name of County]

On this [date], before me

personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he [strike one] resides at [address], that she/he [strike one] is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he [strike one] knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he [strike one] signed her/his [strike one] name thereto by like order.

[Signature] of Notary Public

My Commission expires: [Date]

(23) Section 264.151 is

amended by adding a new paragraph (1) to read as follows: "(1) A surety bond guaranteeing payment into a trust fund, as specified in Sections 264.147(a)(4) or 264.147(b)(4) or 265.147(a)(4) or 265.147(b)(4), must be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date Bond Executed: [Date]

Effective Date [Date]

Principal: [legal name and business address of owner or operator] Type of organization:

[insert "individual," "trust," "partnership,"

"corporation," or

"association" State of

incorporation: [Name of

State] Surety(ies):

[name(s) and business

address(es)] EPA

Identification Number, name,

address, and sudden

accidental occurrence and/or

nonsudden accidental

occurrence amount(s) for the

facility(ies) guaranteed by

this bond [indicate sudden

accidental occurrence and

nonsudden accidental

occurrence amounts

separately]:

Total penal sum of bond: \$

[Amount] Surety's bond

number: [number]

Know all Persons by These Presents, That we, the principal and Surety(ies) hereto are firmly bound to the Solid and Hazardous Waste Management Branch of the Department of Human Resources of the State of North Carolina, hereinafter called the Branch, in the above penal sum, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required to have a permit or interim status in order to own or operate each hazardous waste management facility identified above and

Whereas said Principal is required, pursuant to 40 CFR 264.147 and/or 265.147, codified at 10 NCAC 10F .0032 (i) and/or .0033(h) respectively, to demonstrate financial responsibility for bodily injury and property damage to third parties caused by each sudden accidental occurrence, or each sudden accidental occurrence and each nonsudden accidental occurrence, as a condition of the permit or interim status, and

Whereas the amount of such financial responsibility that must be demonstrated is \$1 million per each sudden accidental occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs, and \$3 million per each nonsudden accidental occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs.

NOW, THEREFORE, the condition of this obligation is such that if, while this bond is in effect, the Principal shall pay, up to the limits set forth above, for bodily injury and property damage caused by

accidental occurrences arising from operation of any facility identified above, as set forth in Section 264.147 and/or 265.147 of 10 NCAC 10F .0032(i) and/or .0033(h), then this bond shall be null and void, otherwise it is to remain in full force and effect.

Or, if the Principal shall fund the standby trust fund in such amount(s) within fifteen (15) days after the Branch or a court of competent jurisdiction issues an order to do so,

Or, if the Principal shall provide alternate financial assurance, as specified in Sections 264.147 and/or 265.147 of 10 NCAC 10F .0032(i) and/or .0033(h) and obtain the Branch's written approval of such assurance, within ninety (90) days after receipt of notice of cancellation by both the Principal and the Branch from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Branch that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall fulfill this obligation. However, no liability shall attach to the Surety(ies) hereunder until the Principal or the Branch notifies the Surety(ies) of a possible claim for bodily injury and/or property damage caused by accidental occurrences arising from operation of the facility(ies) identified above. Such notice shall automatically extend, for a period of three years, the obligation of the Surety(ies) to pay for bodily injury and property damage caused by such accidental occurrences prior to the date upon which this Surety Bond would otherwise have been terminated.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Branch that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Branch.

The Surety(ies) shall become liable on this bond obligation only for amounts for which it (they) has (have) been presented a final judgment or settlement agreement against the Principal for bodily injury and/or property damage caused by an accidental occurrence or occurrences arising from the operation of the facility(ies) identified above. Said judgment shall be accompanied by a statement signed by the claimant's attorney of record stating that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the Principal exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by Principal to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the Principal.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Branch, provided, however, that cancellation shall not take effect until at least one hundred and twenty (120) days after the date of receipt of the notice of cancellation by both the Principal and the branch, as shown by the latter return receipt, and provided further that such notice shall not discharge any obligations of the Surety(ies) hereunder which may have arisen prior to the receipt of such notice.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization by the Branch for termination of the bond.

[The following paragraph is an optional rider that may be included but is not required.]

The Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount of financial responsibility for

bodily injury and property damage to third parties caused by accidental occurrences, provided that the penal sum does not increase by more than 20% in any one year, and no decrease in the penal sum takes place without the written approval of the Branch.

In witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The individuals whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Section 264.151(1) of 10 NCAC 10F .0032(i) as in effect on the date this bond was executed.

Principal [Signature(s)]
[Title(s)] [Name(s)] [Corporate seal] [Corporate Surety(ies)]
[Name(s) and address(es)] State of incorporation [Name of State]
Liability limit: \$ [Amount]
[Signature(s)] [Name(s) and title(s)] [Corporate seal] [For every co-surety, provide signatures(s), corporate seal, and other information in the same manner as for the Surety above.] Bond premium: \$ [Amount]

(24) Section 264.151 is

amended by adding a new paragraph (m) to read as follows: "(m) A letter of credit, as specified in Sections 264.147(a)(5) or 264.147(b)(5) or 265.147(a)(5) or 265.147(b)(5), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**IRREVOCABLE STANDBY LETTER
OF CREDIT**

Solid and Hazardous Waste
Management Branch P. O. Box
2091 Raleigh, N. C. 27602
Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. [Number] in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars (\$ [Amount]), available upon presentation, by you or your designee, of

(1) Your or your designee's

signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to Sections 264.147 and/or 265.147 of 10 NCAC 10F .0032 and/or .0033, regulations issued under authority of North Carolina General Statutes, Chapter 130A."

This letter of credit is effective as of [date] and shall expire on [date] at least one (1) year later], but such expiration date shall be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date, unless, at least one hundred and twenty (120) days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your or your designee's sight draft for one hundred and twenty (120) days after the date of receipt of notification by both you and [owner's or operator's name], as shown on the latter of the signed return receipts.

Whenever this letter of credit is drawn on, under, and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall pay the amount of the draft in accordance with your or your designee's instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Section 264.15(m) of 10 NCAC 10F .0032(i) as in effect on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date] This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce" or "The Uniform Commercial Code".]

(25) Section 264.151 is amended by adding a new paragraph (n) to read as follows: "(n) A corporate guarantee, as specified in Sections 264.147(h) or 265.147(h), must be worded as follows, except that instructions in brackets are to be replaced with the

relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR
LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, on behalf of our subsidiary [owner or operator] of [business address], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee. Recitals.

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Sections 264.147(f) and/or 265.147(f) of 10 NCAC 10F .0032(i) and/or .0033(h).

(2) [Owner or Operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for [insert dollar amount] of coverage.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury and/or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury and/or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences arising from the operation of the above-named facility(ies), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to

arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits identified above.

4. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Solid and Hazardous Waste Management Branch (Branch) and to [owner or operator] that he intends to provide alternate liability coverage as specified in Sections 264.147 and/or 265.147, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

5. The guarantor agrees to notify the Branch by certified mail of a voluntary or involuntary proceeding under Title II (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

6. Guarantor agrees that within 30 days after being notified by the Branch of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in Section 264.147 and/or 265.147 in the name of the owner or operator, unless [owner or operator] has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by Section 264.147 and/or 265.147, provided that such modification shall become effective only if the Branch does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements

of Section 264.147 and/or 265.147 for the above listed facility(ies), except as provided in paragraph 9 of this agreement.

9. Guarantor may terminate this guarantee by sending notice by certified mail to the Branch and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Branch approves, alternate liability coverage complying with Sections 264.147 and/or 265.147.

10. This guarantee is to be interpreted and enforced in accordance with the laws of the State of North Carolina.

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by and party.

I hereby certify that the wording of this guarantee is identical to the wording specified in Section 264.151(n) of 10 NCAC 10F .0032(i). Effective date: [Name of guarantor] [Authorized signature for guarantor] [Name of person signing] [Title of person signing] Signature of witness or notary:

(k) The provision for "Tanks" contained in 46 Fed. Reg. 2,867, 2,868, 2,895, and 35,249 (1981) [to be codified in 40 CFR 264.190 to 264.200 (Subpart J)] have been adopted by reference as amended by 46 Fed. Reg. 35,249 (1981); 50 Fed. Reg. 2004 (1985); and 51 Fed. Reg. 25,472 to 25,478.

.0033 INTERIM STATUS STANDARDS FOR HWMF's - PART 265

(b) "General Facility Standards" contained in 45 Fed. Reg. 33,234 to 33,236 (1980) [to be codified in 40 CFR 265.10 to 265.17 (Subpart B)] have been adopted by reference as amended by 48 Fed. Reg. 14,295 (1983); 50 Fed. Reg. 18,374 and 28,749 (1985); and 51 Fed. Reg. 25,478 and 25,479 (1986).

(c) The provisions for "Manifest System, Recordkeeping, and Reporting" contained in 45 Fed. Reg. 33,238 and 33,239 (1980) [to be codified in 40 CFR 265.70 to 265.77 (Subpart E)] have been adopted by reference as amended by 45 Fed. Reg. 86,970, 86,974 (1980); 46 Fed. Reg. 7,680 (1981); 48 Fed. Reg. 3,982 (1983); 50 Fed. Reg.

18,374 (1985); and 51 Fed. Reg. 25,479 (1986).

(g) The provisions for "Closure and Post-Closure" contained in 45 Fed. Reg. 33,242 and 33,243 (1980) [to be codified in 40 CFR 265.110 to 265.120 (Subpart g)] have been adopted by reference as amended by 46 Fed. Reg. 2,875, 2,876, and 2,877, and 2,896 (1981); and 51 Fed. Reg. 16,451 to 16,455, and 25,479 (1986); except that 40 CFR 265.120 (b) is rewritten as follows: "If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may add a notation on the deed to the facility property or other instrument normally examined during title search, indicating the removal of the waste."

(h) "Financial Requirements" contained in 45 Fed. Reg. 33,243 and 33,244 (1980) [to be codified in 40 CFR 265.140 to 265.151 (Subpart H)] have been adopted by reference as amended by 46 Fed. Reg. 2,877 to 2,888 (1981); 47 Fed. Reg. 15,064 to 15,074, and 16,558 to 16,561 (1982); and 48 Fed. Reg. 14,295 and 30,115 (1983); and 51 Fed. Reg. 16,455 to 16,458, 25,479, (1986), except that 40 CFR 265.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 265.145(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 265.147(a), and 40 CFR 265.147(b), are not adopted by reference.

(1) The following shall be substituted for the provisions of 40 CFR 265.143(a)(3) which were not adopted by reference: "The owner or operator must deposit the full amount of the closure cost estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this section."

(2) The following shall be substituted for the provisions of 40 CFR

265.143(a)(4) which were not adopted by reference: "Deleted"

(3) The following shall be substituted for the provisions of 40 CFR 265.143(a)(5) which were not adopted by reference: "Deleted"

(4) The following shall be substituted for the provisions of 40 CFR 265.143(a)(6) which were not adopted by reference: "After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference."

(5) The following shall be substituted for the provisions of 40 CFR 265.145(a)(3) which were not adopted by reference: "The owner or operator must deposit the full amount of the post-closure cost estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a post-closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or shall obtain other financial assurance as specified in this Section."

(6) The following shall be substituted for the provisions of 40 CFR 265.145(a)(4) which were not adopted by reference: "Deleted"

(7) The following shall be substituted for the provisions of 40 CFR 265.145(a)(5) which were not adopted by reference: "Deleted"

(8) The following shall be substituted for the provisions of 40 CFR 265.145(a)(6) which were not adopted by reference: "After the trust fund is established, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference."

(9) Section 265.141 is amended by adding a new paragraph (h) to read as follows: "(h) 'Branch' means the Solid and Hazardous Waste Management Branch of the North Carolina Department of Human Resources."

(10) The following shall be substituted for the provisions of 40 CFR 265.147(a), which was not adopted by reference: "Section 265.147 Liability requirements.

(a) Coverage for sudden accidental occurrences. By the effective date of these regulations, an owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified

in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in Section 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in Section 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Branch. If requested by the Branch, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraphs (f) and (h) of this section.

(3) Liability trust fund.

(i) An owner or operator may demonstrate the required liability coverage by establishing a sudden accidental occurrences liability trust fund which conforms to the requirements of this paragraph and by submitting an originally signed duplicate of the trust agreement to the Branch. The trustee must be an entity which has the authority to act

as a trustee and whose trust operations are regulated and examined by a federal or State agency.

(ii) The wording of the trust agreement must be identical to the wording specified in Section 264.151(k)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment [for example, see Section 264.151(k)(2)].

(iii) On the date of the initial establishment of the sudden accidental occurrences liability trust fund, the value of the fund shall be at least two million dollars (\$2,000,000), or such other amount as required by the Branch pursuant to Section 265.147(c) or (d).

(iv) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the sudden accidental occurrences liability trust fund, he may submit a written request to the Branch for release of the amount in the trust fund in excess of the amount of the required coverage to be demonstrated by the sudden accidental occurrences liability trust fund.

(v) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the sudden accidental occurrences liability trust fund in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record, that the judgment was either (1) rendered by the highest court in the

jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or

b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(vi) After receiving the material described in Section 265.147(a)(3)(v) above, the Trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.

(vii) No trust shall be terminated without prior written consent of the Branch. The Branch may agree to termination of the trust when it has determined that the owner or operator has substituted alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 265.115."

(11) Section 265.147(a) is amended by adding a new paragraph (4) to read as follows: "(4) Surety bond guaranteeing payment into a sudden accidental occurrences liability trust fund.

(i) Any owner or operator may demonstrate the required coverage by obtaining a surety bond which conforms to the requirements of this paragraph and by submitting the surety bond to the Branch. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of

the U.S. Department of Treasury.

(ii) The wording of the surety bond must be identical to the wording specified in Section 264.151(1).

(iii) The owner or operator who uses a surety bond to satisfy the requirements of Section 265.147(a) shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder shall, in accordance with instructions from the Branch, be deposited by the surety directly into the standby trust fund. This standby trust shall meet the requirements in Section 265.147(a)(3), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Branch with the surety bond; and

b. Until the standby trust fund is funded pursuant to the requirements of Section 265.147(a)(4)(viii), the following are not required: (i) payment into the trust fund as specified in Section 265.147(a)(3)(iii); (ii) annual valuations as required by the trust agreement [see 264.151(k)(1) Section 10]; and (iii) notices of nonpayment as required by the trust agreement [see 264.151(k)(1) Section 15].

(iv) The bond shall guarantee that the owner or operator shall:

a. Fund the standby trust fund in an amount equal to either the sum of the judgment or settlement described in Section 265.147(a)(4)(vii) and the costs of administering said fund, or the amount of the penal sum, whichever is less, within fifteen (15) days after the Branch or a court of competent jurisdiction issues an order to that effect; or

b. Provide alternate financial assurance as specified in this

section, and obtain the Branch's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and by the Branch of a notice of cancellation of the surety bond from the surety.

(v) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator does not perform as guaranteed by the bond.

(vi) The penal sum of the bond shall be at least two million dollars (\$2,000,000), or such other amount as required by the Branch pursuant to Section 265.147(c) or (d).

(vii) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the surety bond, he may submit a written request to the Branch for release of the amount of the penal sum of the bond in excess of the amount of the required coverage to be demonstrated by the surety bond.

(viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the surety bond in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by

the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or b. In the case of a settlement, an originally signed duplicate of settlement agreement and an originally signed duplicate of the release of all claims.

(ix) After receiving the material described in Section 265.147(a)(4)(viii) above, the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the owner or operator to pay to the trustee such amounts, not to exceed the amount of the judgment or settlement, and the costs of administering said fund, or the amount of the required coverage, whichever is less. If the owner or operator fails to perform as required by the Branch's instructions, the Branch shall instruct the surety to place funds in the amount guaranteed for the facility(ies) into the standby trust fund. The trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.

(x) Under the terms of the bond, the surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and to the Branch. Cancellation may not take effect, however, until at least one hundred twenty (120) days after the date of receipt of the notice of cancellation by both the owner or operator and the Branch, as shown by the latter return receipt.

(xi) No bond shall be cancelled without prior written consent of the Branch. The Branch may

agree to cancellation of the bond when it has determined that the owner or operator has substituted alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 265.115."

(12) Section 265.147(a) is amended by adding a new paragraph (5) to read as follows: "(5) Letter of credit.

(i) An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which conforms to the requirements of this paragraph and by submitting the letter to the Branch. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(ii) The wording of the letter of credit shall be identical to the wording specified in Section 264.151(m).

(iii) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall, in accordance with instructions from the Branch, be deposited by the issuing institution directly into the standby trust fund. This standby trust fund shall meet the requirements in Section 265.147(a)(3), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Branch with the letter of credit; and

b. Until the standby trust fund is funded pursuant to the requirements of Section 265.147(a)(5)(ix), the following are not required: (1) payment into the trust fund as

specified in Section 265.147(a)(3)(iii); (ii) annual valuations as required by the trust agreement [see 264.151(k)(1), Section 101]; and (iii) notices of nonpayment as required by the trust agreement [see 264.151(k)(1), Section 151].

(iv) The letter of credit shall be accompanied by a letter from the owner or operator which shall state:

- a. The letter of credit number;
- b. The name of the issuing institution;
- c. The date of issuance of the letter of credit;
- d. The EPA identification number(s) of the facility(ies);
- e. The name(s) and address(es) of the facility(ies); and
- f. The amount of funds assured by the letter of credit.

(v) The letter of credit shall be irrevocable and shall be issued for a period of at least one year unless at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the Branch by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the Branch have received the notice, as shown by the latter return receipt.

(vi) The letter of credit shall be issued in an amount at least two million dollars (\$2,000,000), or such other amount as required by the Branch pursuant to Section 265.147(c) or (d).

(vii) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the amount of the letter of credit, he may submit a written request to the Branch

for release of the amount of the letter of credit in excess of the amount of required coverage to be demonstrated by the letter of credit.

(viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a sudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in satisfaction of the judgment or settlement by submitting to the Trustee:

- a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or
- b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(ix) After receiving the material described in Section 265.147(a)(5)(viii) above, the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the institution issuing the letter of credit to pay to the Trustee such amounts, not to exceed the amount of the judgment or settlement, and the costs of administering

said fund, or the amount of the required coverage, whichever is less. The Trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of funds in the trust.

(x) If the owner or operator does not establish alternate financial assurance as required by this section and does not obtain written approval from the Branch of any such alternate financial assurance within ninety (90) days of receipt by both the owner or operator and by the Branch of a notice that the issuing institution will not extend the letter of credit beyond the current expiration date, the Branch shall draw on the letter of credit. The Branch may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Branch shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section or has failed to obtain written approval by the Branch of such assurance.

(xi) No letter of credit shall be terminated without prior written consent of the Branch. The Branch may return the letter of credit to the issuing institution for termination when the Branch has determined that the owner or operator has substituted alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 265.115."

(13) Section 265.147(a) is amended by adding a new paragraph (6) to read as follows:

"(6) Use of multiple

financial mechanisms. An owner or operator may demonstrate the required liability coverage by establishing more than one financial mechanism as specified in this section. These mechanisms are limited to trust funds, surety bonds, guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (1), (3), (4), and (5) of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least two million dollars (\$2,000,000). If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Branch may use any and all of the mechanisms to provide for sudden accidental occurrences liability coverage for the facility."

(14) The following shall be substituted for the provisions of 40 CFR 265.147(b), which was not adopted by reference:

"(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden

accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in Section 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in Section 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Branch. If requested by the Branch, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraphs (f) and (h) of this section.

(3) Liability trust fund.

(i) An owner or operator may demonstrate the required liability coverage by establishing a nonsudden accidental occurrences liability trust fund which conforms to the requirements of this

paragraph and by submitting an originally signed duplicate of the trust agreement to the Branch. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(ii) The wording of the trust agreement must be identical to the wording specified in Section 264.151(k)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment [for example, see Section 264.151(k)(2)].

(iii) On the date of the initial establishment of the nonsudden accidental occurrences liability trust fund, the value of the fund shall be at least six million dollars (\$6,000,000), or such other amount as required by the Branch pursuant to Section 265.147(c) or (d).

(iv) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the nonsudden accidental occurrences liability trust fund, he may submit a written request to the Branch for release of the amount in the trust fund in excess of the amount of the required coverage to be demonstrated by the nonsudden accidental occurrences liability trust fund.

(v) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the nonsudden accidental occurrences liability trust fund in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a

person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or

b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(vi) After receiving the material described in Section 265.147(b)(3)(v) above, the Trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.

(vii) No trust shall be terminated without prior written consent of the Branch. The Branch may agree to termination of the trust when it has determined that the owner or operator has substituted alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 265.115."

(15) Section 265.147(b) is amended by adding a new paragraph (4) to read as follows:

"(4) Surety bond guaranteeing payment into a nonsudden accidental occurrences liability trust fund.

(i) An owner or operator may demonstrate the required coverage by obtaining a surety bond which conforms to the

requirements of this paragraph and by submitting the surety bond to the Branch. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of Treasury.

(ii) The wording of the surety bond must be identical to the wording specified in Section 264.151(1).

(iii) The owner of operator who uses a surety bond to satisfy the requirements of Section 265.147(b) shall also establish a standby trust fund. Under the terms of the surety bond, all payments made thereunder shall, in accordance with instructions from the Branch be deposited by the surety directly into the standby trust fund. This standby trust shall meet the requirements in Section 265.147(b)(3), except that:

a. An originally signed duplicate of the trust agreement shall be submitted to the Branch with the surety bond; and

b. Until the standby trust fund is funded pursuant to the requirements of Section 265.147(b)(4)(iv), the following are not required: (i) payment into the trust fund as specified in section 265.147(b)(3)(iii); (ii) annual valuations as required by the trust agreement [see 264.151(k)(1) Section 10]; and (iii) notices of nonpayment as required by the trust agreement [see 264.151(k)(1) Section 15].

(iv) The bond shall guarantee that the owner or operator shall:

a. Fund the standby trust fund in an amount equal to either the sum of the judgment or settlement described in Section 265.147(b)(4)(vii) and the costs of administering said fund, or the amount of the

penal sum, whichever is less, within fifteen (15) days after the Branch or a court of competent jurisdiction issues an order to that effect; or

b. Provide alternate financial assurance as specified in this section, and obtained the Branch's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and by the Branch of a notice of cancellation of the surety bond from the surety.

(v) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator does not perform as guaranteed by the bond.

(vi) The penal sum of the bond shall be at least six million dollars (\$6,000,000), or such other amount as required by the Branch pursuant to Section 265.147(c) or (d).

(vii) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the surety bond, he may submit a written request to the Branch for release of the amount of the penal sum of the bond in excess of the amount of the required coverage to be demonstrated by the surety bond.

(viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the surety bond in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of

record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or

b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(ix) After receiving the material described in Section 265.147(v)(4)(viii) above, the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the owner or operator to pay to the trustee such amounts, not to exceed the amount of the judgment or settlement and the costs of administering said fund, or the amount of the required coverage, whichever is less. If the owner or operator fails to perform as required by the Branch's instructions, the Branch shall instruct the surety to place funds in the amount guaranteed for the facility(ies) into the standby trust fund. The trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of the funds in the trust.

(x) Under the terms of the bond, the surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and to the Branch. Cancellation may not take effect, however, until at least one hundred twenty (120)

days after the date of receipt of the notice of cancellation by both the owner or operator and the Branch, as shown by the latter return receipt.

(xi) No bond shall be cancelled without prior written consent of the Branch. The Branch may agree to cancellation of the bond when it has determined that the owner or operator has substituted alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 265.115."

(16) Section 265.147(b) is amended by adding a new paragraph (5) to read as follows:

"(5) Letter of credit.

(i) An owner or operator may demonstrate the required coverage by obtaining an irrevocable letter of credit which conforms to the requirements of this paragraph and by submitting the letter to the Branch. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(ii) The wording of the letter of credit shall be identical to the wording specified in Section 264.151(m).

(iii) An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all payments made thereunder shall, in accordance with instructions from the Branch, be deposited by the issuing institution directly into the standby trust fund. This standby trust fund shall meet the requirements in Section 265.147(b)(3), except that:

a. An originally signed

duplicate of the trust agreement shall be submitted to the Branch with the letter of credit; and

b. Until the standby trust fund is funded pursuant to the requirements of 265.147(b)(5)(ix), the following are not required: (i) payment into the trust fund as specified in Section 265.147(b)(3)(iii); (ii) annual valuations as required by the trust agreement [see 264.151(k)(1) Section 10]; and (iii) notices of nonpayment as required by the trust agreement [see 264.151(k)(1) Section 15].

(iv) The letter of credit shall be accompanied by a letter from the owner or operator which shall state:

a. The letter of credit number;
b. The name of the issuing institution;
c. The date of issuance of the letter of credit;
d. The EPA identification number(s) of the facility(ies);
e. The name(s) and address(es) of the facility(ies); and
f. The amount of funds assured by the letter of credit.

(v) The letter of credit shall be irrevocable and shall be issued for a period of at least one year unless at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the Branch by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred and twenty (120) days will begin on the date when both the owner or operator and the Branch have received the notice, as shown by the latter return receipt.

(vi) The letter of credit shall be issued in an amount at least six million dollars (\$6,000,000), or such

other amount as required by the Branch pursuant to Section 265.147(c) or (d).

(vii) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the amount of the letter of credit, he may submit a written request to the Branch for release of the amount of the letter of credit in excess of the amount of required coverage to be demonstrated by the letter of credit.

(viii) Any person who obtains final judgment or settlement against the owner or operator for bodily injury and/or property damage caused by a nonsudden accidental occurrence or occurrences arising from the operation of the facility may request payment from the letter of credit in satisfaction of the judgment or settlement by submitting to the Trustee:

a. In the case where a person has obtained a final judgment, a certified copy of the judgment and a statement, signed by the claimant's attorney of record that the judgment was either (1) rendered by the highest court in the jurisdiction where the action was brought and the owner or operator exhausted all rights of appeal, or (2) rendered by the highest court which rendered a judgment and no appeal was made by the owner or operator to a higher court within the time allowed by applicable statute or rule, or (3) agreed to by the owner or operator; or

b. In the case of a settlement, an originally signed duplicate of the settlement agreement and an originally signed duplicate of the release of all claims.

(ix) After receiving the material described in Section 265.147(b)(5)(viii)

above, the Trustee shall notify the Branch of the amount of such judgment or settlement. The Branch shall then instruct the institution issuing the letter of credit to pay to the Trustee such amounts, not to exceed the amount of the judgment or settlement and the costs of administering said fund, or the amount of the required coverage, whichever is less. The Trustee shall pay to the person who obtained the judgment or settlement such amount of the judgment or settlement, but not to exceed the amount of funds in the trust.

(x) If the owner or operator does not establish alternate financial assurance as required by this section and does not obtain written approval from the Branch of any such alternate financial assurance within ninety (90) days of receipt by both the owner or operator and by the Branch of a notice that the issuing institution will not extend the letter of credit beyond the current expiration date, the Branch shall draw on the letter of credit. The Branch may delay drawing on the letter of credit if the issuing institution grants an extension of the term of the letter of credit. During the last thirty (30) days of any such extension, the Branch shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section or has failed to obtain written approval by the Branch of such assurance.

(xi) No letter of credit shall be terminated without prior written consent of the Branch. The Branch may return the letter of credit to issuing institution for termination when the Branch has determined that the owner or operator has substituted

alternate financial assurance as specified in this section, or when it approves the certification of closure of the facility submitted pursuant to Section 265.115."

- (17) Section 265.147(b) is amended by adding a new paragraph (6) to read as follows:

"(6) Use of multiple financial mechanisms. An owner or operator may demonstrate the required liability coverage by establishing more than one financial mechanism as specified in this section. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (1), (3), (4), and (5) of this section, except that it is the combination of the mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least six million dollars (\$6,000,000). If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Branch may use any and all of the mechanisms to provide for sudden accidental occurrences liability coverage for the facility."

- (18) Section 265.147 is amended by adding a new paragraph (h) to read as follows:

"(h) Corporate guarantee for liability coverage."

- (1) Subject to paragraph (2), an owner or operator may meet the requirements of this section by obtaining a written guarantee hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator as defined in Section 265.140(d). The guarantor must meet the requirements for owners or

operators in paragraphs (f)(1) through (7) of this section. The wording of the corporate guarantee must be identical to the wording specified in Section 264.151(n). A certified copy of the corporate guarantee must accompany the items sent to the Branch as specified in paragraph (f)(3) of this Section. The terms of the corporate guarantee must provide that:

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury and/or property damage caused by sudden or nonsudden accidental occurrences (or both, as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to rise from such injury or damage, the guarantor will do so up to the limits of coverage."

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Branch. This guarantee may not be terminated unless and until the Branch approves alternate liability coverage complying with Section 264.147 and/or 265.147."

- (2) A corporate guarantee may be used to satisfy the requirements of this section if it is a legally valid and enforceable obligation in the State of North Carolina."

- (19) Section 265.147 is amended by adding a new paragraph (i) to read as follows:

"(i) Notice of claim."

The owner or operator of each facility shall give written notice to the Branch of every claim from bodily injury and/or property damage caused by a sudden and/or nonsudden accidental occurrence or occurrences arising from

the operation of the facility(ies). The owner or operator of each facility shall give such notice to the Branch as soon as possible and in any event no later than thirty (30) days after learning of such claim. The owner or operator of each facility shall give written notice to the Branch of every judgment against the owner or operator for bodily injury and/or property damage caused by a sudden or nonsudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall give such notice to the Branch as soon as possible and in any event no later than thirty (30) days after learning of said judgment. The owner or operator of each facility shall submit to the Branch a copy of every judgment against the owner or operator for bodily injury and/or property damage caused by a sudden and/or nonsudden accidental occurrence or occurrences arising from the operation of the facility(ies). The owner or operator of each facility shall submit a copy of such judgment to the Branch as soon as possible and in any event no later than thirty (30) days after receiving a copy thereof."

(20) Section 265.147 is amended by adding a new paragraph (j) to read as follows:

"(j) Continuous coverage.

An owner or operator must continuously provide liability coverage for a facility as required by this section until notified that he is no longer required to maintain liability coverage for that facility in accordance with Section 265.147(c). If the owner or operator fails to submit evidence of liability coverage as required by Section 265.147 and to obtain from the Branch

approval of such coverage before the expiration of the current liability coverage, the owner or operator shall cease treatment, storage, or disposal of hazardous waste at the facility until liability coverage is demonstrated to and approved by the Branch."

(j) The provisions for "Tanks" contained in 45 Fed. Reg. 33,244 and 33,245 (1980) [to be codified in 40 CFR 265.190 to 265.201 (Subpart J)] have been adopted by reference as amended by 46 Fed. Reg. 2,896 and 35,249 (1981); and 51 Fed. Reg. 25,478 to 25,485 and 25,479 to 25,481 (1986).

.0034 INTERIM STATUS STANDARDS FOR PERMITTING - PART 270

(b) The following provisions for additional permitting requirements contained in 48 Fed. Reg. 14,233 to 14,241, and 30,114 (1983) [to be codified in 40 CFR 270 (Subpart B, Permit Application)] have been adopted by reference as amended by 48 Fed. Reg. 39,622 (1983); 50 Fed. Reg. 2006, 28,751, and 28,752 (1985); and 51 Fed. Reg. 10,176, and 16,458, and 25,486 (1986).

(c) The following provisions for additional permitting requirements contained in 48 Fed. Reg. 14,241 to 14,243 and 30,114 (1983) to be added [to be codified in 40 CFR 270 (Subpart C, Permit Conditions)] have been adopted by reference as amended by 48 Fed. Reg. 39,622 (1983); and 50 Fed. Reg. 28,752 (1985); and 51 Fed. Reg. 25,486 (1986).

(d) The following provisions for additional permitting requirements contained in 48 Fed. Reg. 14,243 to 14,245 and 30,114 (1983) to be added [to be codified in 40 CFR 270 (Subpart D, Changes to Permit)] have been adopted by reference as amended by 50 Fed. Reg. 28,752 (1985); and 51 Fed. Reg. 16,458.

(g) The following provisions for additional permitting requirements contained in 48 Fed. Reg. 14,248 (1983) [to be codified in 40 CFR 270 (Subpart G, Interim Status)] have been adopted by reference as amended by 49 Fed. Reg. 17,718 (1984); and 50 Fed. Reg. 28,753 (1985); and 51 Fed. Reg. 16,459, and 25,486 (1986). However, the date "November 8, 1985" contained in 40 CFR 270.73(c) shall be deleted and replaced with the date "January 1, 1986".

.0041 REQUIREMENTS; HAZARDOUS
WASTE PROGRAM - PART 271

The following provisions
for the sharing of information
[to be codified in 40 CFR 271.1
to 271.17] have been adopted by
reference as amended by 50 Fed.
Reg. 28,754 (1985) and 51 Fed.
Reg. 10,176 and 25,486 (1986).

Notice is hereby given in
accordance with G.S. 150B-12
that the Division of Medical
Assistance intends to amend
regulations cited as 10 NCAC 26D
.0014 (a) & (d).

The proposed effective date of
this action is February 1, 1987.

Statutory Authority: G.S.
108A-25(b); 108A-62; Chapter
1014, 1985 Session Laws, 2nd
Session 1986.

The public hearing will be
conducted at 1:30 pm on November
14, 1986 at North Carolina
Division of Medical Assistance,
1985 Umstead Drive, Raleigh, NC
27603, Room 201.

Comment Procedures: Written
comments concerning this
amendment must be submitted by
November 14, 1986 to Director,
Division of Medical Assistance,
1985 Umstead Drive, Raleigh, NC
27603. Oral comments may be
presented at the hearing.

CHAPTER 26 - MEDICAL SERVICES

SUBCHAPTER 26D - LIMITATION ON
AMOUNT; DURATION; AND SCOPE

.0014 THERAPEUTIC LEAVE

(a) Each Medicaid eligible
patient who is occupying a
skilled nursing (SNF) or
intermediate care (ICF or
ICF-NR) bed for which the North
Carolina Medicaid Program is
then paying reimbursement shall
be entitled to take up to 48 60
days of therapeutic leave in any
12-month period from any such
bed without the facility in
which the bed is located
suffering any loss of
reimbursement during the period
of leave.

(d) Prior approval for any
therapeutic leave must be
obtained from the State or its
agent prior to the beginning of
the intended absence.

(d) No more than 14
consecutive therapeutic leave
days may be taken without
approval of the Division of
Medical Assistance.

Notice is hereby given in
accordance with G.S. 150B-12
that the Division of Medical
Assistance intends to adopt
regulation cited as 10 NCAC 26H
.0507.

The proposed effective date of
this action is February 1, 1987.

Statutory Authority: G.S.
108A-25(b); 108A-54; 108A-55;
P.L. 93-369; P.L. 99-272; 42
C.F.R. 447.10 & 447.342.

The public hearing will be
conducted at 1:30 pm on November
14, 1986 at North Carolina
Division of Medical Assistance,
1985 Umstead Drive, Raleigh, NC
27603, Room 201.

Comment Procedures: Written
comments concerning this
amendment must be submitted by
November 14, 1986, to Director,
Division of Medical Assistance,
1985 Umstead Drive, Raleigh, NC
27603. Oral comments may be
presented at the hearing.

SUBCHAPTER 26H - REIMBURSEMENT
PLANS

SECTION .0500 - REIMBURSEMENT
FOR SERVICES

.0507 INDEPENDENT LABORATORY
SERVICES

Fees for independent
laboratory services shall be set
based on the following in the
stated order of precedence:

- (1) Title XVIII maximum fee.
This will be used when
available.
- (2) The 75th percentile of
charges from the calendar
year 1979. This will be used
when (1) is not available.
- (3) A rate established by the
state agency based on current
charges. This will be used
when neither (1) nor (2) is
available.

These maximum rates shall also
apply to laboratory services
paid to hospital outpatient
facilities, physicians, and any
other provider supplying
outpatient laboratory services.

TITLE 11 - INSURANCE

Notice is hereby given in
accordance with G.S. 150B-12
that the Department of Insurance
intends to amend regulation
cited as 11 NCAC 10 .0304(6) and
adopt 11 NCAC 10 .0312.

The proposed effective date of
this action is February 1, 1987.

Statutory Authority: G.S.
58-480(e)(14).

The public hearing will be conducted at 10:00 a.m. on November 17, 1986 at the Hearing Room, Third Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Written comments may be sent to Roger Langley, P. O. Box 26387, Raleigh, N.C. 27611. Mr. Langley may be contacted by calling (919) 733-3368.

CHAPTER 10 - FIRE AND CASUALTY DIVISION

SECTION .0300 - POLICY FORMS: RULES AND RATE FILINGS

.0304 PROHIBITED POLICY PROVISIONS

Policy forms will be disapproved if they contain any of the following kind of policy provisions:

- (1) a provision that the application is a consideration of coverage; unless the application is physically attached to the policy; or
 - (2) a provision that the rules or bylaws of the company are a part of the contract; unless such rules or bylaws are actually written into or attached to the policy;
 - (3) a provision that a portion of the premium becomes due and payable only after the occurrence of a loss, for example, a premium retention policy;
 - (4) a provision in a liability policy that relieves the company of liability on account of insolvency of the insured;
 - (5) a provision that knowledge of the agent is not binding on the company;
 - ~~(6) provision in a liability policy avoiding payment of punitive or exemplary damages on behalf of an insured;~~
 - ~~(7) (6) a provision purporting to limit to less than three years any suit on the contract by the policyholder.~~
- [NCID Reg. #1, 7, 16]

.0312 ADDITIONAL INFORMATION

In addition to the information that must be submitted to comply with the provisions of G.S. 58-480(d) and (e), the following information must be submitted:

- (1) Forms
- (a) A description of the

line(s) and/or type(s) of insurance affected the form filing.

- (b) A list of states where this filing has been made.
- (c) Action taken by domiciliary state if form has been filed in that state.
- (d) A list of states that have approved this filing.
- (e) A list of states that have disapproved this filing and reasons for disapproval.
- (f) A list of states that have required modifications resulting in approval.
- (g) Copies of all required modifications referred to in (f).
- (h) If the filing is identical to a filing made with the Department of Insurance by a licensed rating organization, give the name of the licensed rating organization and its filing designation (N.C. Department of Insurance file number, date approved, reference number, filing date, etc.).
- (i) If the filing is similar to a filing made with the Department of Insurance by a licensed rating organization, give the name of the licensed rating organization, its filing designation, (N.C. Department of Insurance file number, date approved, reference number, filing date, etc.) and describe the differences between your forms and those of the licensed rating organization.
- (j) Computer printed declarations pages should be completed in "John Doc" fashion.
- (k) Proposed effective date of the filing.
- (1) A certification of the accuracy of the filing by an officer of the company or head of the filings department.
- (2) Rates
 - (a) A description of the line(s) and/or type(s) of insurance affected by this rate/rule filing.
 - (b) The program title of the filing where applicable.
 - (c) The purpose of the filing.
 - (d) Whether the rates being filed will be used for occurrence or claims made policies.
 - (e) The company or bureau's

- approximate market share in North Carolina for this line of insurance.
- (f) The estimated total dollar impact of the filing upon the company or bureau's N. C. policyholders.
 - (g) Whether and N. C. policyholder will receive a premium increase as a result of the filing.
 - (h) Affiliation with any licensed rating organization or advisory organization and whether filing is for a deviation.
 - (i) Minimum requirements for eligibility for the deviation.
 - (j) Description of other restrictions that apply to the deviation.
 - (k) Where the company or bureau has a schedule rating plan approved by the Department of Insurance for the line(s) and/or type(s) of insurance affected by the rate filing, a statement as to whether the company or bureau permits both the schedule rating plan and the "across the board" deviation to be applied to the same risk.
 - (l) Countrywide experience - Countrywide written premium, earned premium, incurred losses and loss ratio for each of the last five years separately.
 - (m) North Carolina experience - North Carolina written premium, earned premium, incurred losses and loss ratio for each of the last five years separately.
 - (n) A list of the number of N. C. policies (exposure units) written in each of the last five years with the percentage of change from one year to the next.
 - (o) A countrywide expense exhibit
 - (p) A North Carolina expense exhibit
 - (q) A rate change history for the last five years, including the effective date and amount (percentage change) of each change.
 - (r) A side-by-side or summary comparison of current rates to proposed rates.
 - (s) Proposed effective date.
 - (t) A certification of the accuracy of the filing by an officer of the company or head of the filings department.

Notice is hereby given in

accordance with G.S. 150B-12 that the Department of Insurance intends to adopt regulations cited as 11 NCAC 11H .0101 through .0305.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 97-93.

The public hearing will be conducted at 2:00 p.m. on November 17, 1986 at 430 North Salisbury Street, Hearing Room, Third Floor, Dobbs Building, Raleigh, North Carolina 27611.

Comment Procedures: Written comments may be sent to Dick Fields, P. O. Box 26387, Raleigh, North Carolina 27611. Mr. Fields may be contacted by calling (919) 733-5631.

CHAPTER 11 - COMPANY OPERATIONS DIVISION

SUBCHAPTER 11H - WORKERS' COMPENSATION SELF-INSURERS

SECTION .0100 - DEFINITIONS AND GENERAL PROVISIONS

.0101 DEFINITIONS

When used in this Regulation, the following words or terms shall have the meaning as described in this Section.

- (1) "Act" - The Workers' Compensation Act, Chapter 97 of the North Carolina General Statutes, as amended.
- (2) "Department" - The North Carolina Department of Insurance.
- (3) "Commissioner" - The North Carolina Commissioner of Insurance.
- (4) "Loss Fund" - That portion of net or standard premium, exclusive of past due balances deemed delinquent, covering the retention of liability for a self-insurer, under the terms of an aggregate excess insurance contract. In the absence of an aggregate excess policy, it is that portion of net or standard premium, exclusive of past due balances deemed delinquent, allocated to pay claims.
- (5) "Trustees" - The governing body of a fund elected by its members for stated terms of office, to direct the administration of a fund, and whose duties shall include responsibility for approving applications

- for new members of such fund. The majority of such trustees must be members of the fund, but a trustee shall not be an owner, officer or employee of a service company. They may delegate ministerial authority for membership approval to such person as they select, provided that person is not an owner, officer or employee of any service company.
- (6) "Trustees' Fund" - Any monetary fund under the control of the board of trustees of a fund which is not part of the loss fund or which is not set aside to pay claims.
- (7) "Manual Premium" - Premium determined by multiplying annualized payroll amount segregated into the proper Workers' Compensation by job classifications by the applicable manual premium rates approved for use in the State of North Carolina.
- (8) "Fund" - A group self-insurers fund.
- (9) "Fund Year" - That elected period of coverage, up to 12 months in duration, pursuant to which a group self-insurer extends coverage to its members. A fund year shall be considered "open" as long as one claim remains outstanding but in any event shall remain open not less than three years from the beginning of the fund year.
- (10) "Certified Audit" - An audit upon which an auditor duly qualified to practice as a public accountant or certified public accountant expresses his professional opinion that the accompanying statements present fairly the financial position of the employer, corporation, or entity if an individual self-insurer, or of the fund if a group self-insurer, in conformity with generally accepted accounting procedures as considered necessary by the auditor in the circumstances. Statements presented shall, in the minimum, consist of a balance sheet, profit and loss statement and a statement of change in fund position.
- (11) "Service Company" - A business which has contracted with one or more self-insurers for the purpose of providing any or all services necessary to plan

and maintain an approved self-insurance program. The term "Service Agent" is synonymous with the term "Service Company" as used in this Regulation.

- (12) "Net Safety Factor" - Any amount needed in a given fund year in addition to current loss reserves to fund future loss development.
- (13) "Loss Development" - The change in incurred loss values from one point in time to another.
- (14) "Conditional Reserves" - Acceptable assets equal to the security deposit requirement plus any additional contingent reserves established by the trustees or required by the department.
- (15) "Surplus" - All other assets a fund may have on hand in excess of all loss reserves, actual and contingent liabilities including general business expenses and net safety factors in all fund years.
- (16) "Self-Insurer" - This term shall include individual self-insurers, funds, and self-insurers' fund members unless the context clearly indicates a more restrictive definition.

.0102 ACCEPTABLE DEPOSIT FUNDS OR SURETY BOND

(a) In addition to cash, the deposit funds acceptable to the commissioner as a security deposit shall be U.S. Government bonds, notes or bills, issued or guaranteed by the United States of America; money market funds which are invested only in U.S. Government or government agency obligations with a maturity of one year or less; certificates of deposit issued by a duly chartered commercial bank or thrift institution in the State of North Carolina which are protected by the Federal Savings and Loan Insurance Corporation; and such other investments as are approved by the commissioner or surety bonds in a form acceptable to the department and issued by any corporate surety which meets the qualifications prescribed in Rule .0102(a)(2) of this Subchapter.

- (1) All bonds or securities which are posted as security deposits shall be valued annually at market value. In the event market value is less than face value, the department may require that additional securities be

posted by the self-insurer. In making such a determination, the department shall consider the self-insurer's financial condition, the amount by which market value is less than face value, and the likelihood that such securities will be needed to provide benefits.

- (2) In order for a surety bond issued by a corporate surety to be acceptable as fulfilling, in whole or in part the security deposit requirements for a self-insurer, the corporate surety shall be authorized by the commissioner to transact such business in North Carolina.

(b) Any securities so deposited shall be assigned to the Commissioner of Insurance, his successors and assigns or trustee pursuant to a trust document which is acceptable to the commissioner. In case of any default of a self-insurer, employer or fund, the commissioner may sell and/or collect such amounts as shall yield sufficient funds to pay benefits and compensation awarded. Default shall mean the failure to make timely payments of any awards or other disbursements required pursuant to the act. Interest accruing on a negotiable security so deposited shall be collected and transmitted to the depositor provided that the depositor is not in default. All deposits shall remain in the custody of the commissioner until such time as all obligations of the self-insurer have fully been discharged. At such time the commissioner shall return the securities to the self-insurer.

(c) No judgment creditor, other than claimants for benefits under the act shall have a right to levy upon any of the self-insurer's assets held in such deposit.

(d) All securities shall be deposited through the Department of Insurance and shall be accompanied by an appropriate board or trustee resolution and any bond or stock powers or trust documents necessary to render such securities negotiable by the commissioner.

.0103 EXCHANGE AND WITHDRAWAL OF SECURITIES

(a) Any securities held by the Department of Insurance may be exchanged or replaced by the depositor with other securities

of like nature and amount as long as the self-insurer is solvent. No release shall be effectuated until replacement securities or bonds of an equal value have been substituted. Any surety bond may be exchanged or replaced with another surety bond, which meets the requirements of this Regulation provided reasonable notice of not less than 30 days is given to the Department of Insurance. Whenever a self-insurer ceases to self-insure or desires to replace securities with an acceptable surety bond(s), he shall so notify the department and may recover all or a portion of the securities deposited with the department upon posting in lieu thereof an acceptable special release bond issued by a corporate surety qualified pursuant to this Regulation in an amount equal to the total value of such securities. The special release bond shall cover all existing liabilities under the act plus an amount to cover future loss development and shall remain in force until such time as all such obligations under the act have been fully discharged.

.0104 FILING OF REPORTS

(a) Each employer or group of employers self-insured under the act shall submit to the department payroll information as herein required. The rules, classifications and rates as set forth in the currently approved Workers' Compensation and Employers' Liability Insurance Manual will govern the audits of payrolls and the adjustments of premiums. Payroll information shall be submitted summarized by classification. Each self-insured employer or group of employers shall maintain a true and accurate payroll record, which shall be made available during reasonable business hours, upon demand, to the commissioner or his authorized representatives. An employer may keep payroll records outside the State of North Carolina upon written approval granted by the commissioner within his discretion, provided that in such event the employer shall make such records available for inspection within the state within 30 days of any request for inspection by the department. Unless payroll records are maintained in such manner that a true and accurate division by departments or

occupational classifications can readily be determined for proper rating, the entire payroll of that employer shall be presumed to be within the classification to which the highest insurance rate is applicable.

(b) In addition, each individual self-insurer and group self-insurer shall submit the following information not later than 30 days subsequent to the filing deadline for reporting of summary loss data.

(1) an explanation of the self-insurers reserving policy-including an explanation of any details of the adopted reserving policy as regards claims under the Workers' Compensation Act, and any specific reserve guidelines;

(2) a statement of total reserves for claims incurred pursuant to the act specifically identifying each claim upon which is held a reserve in excess of fifty thousand dollars (\$50,000); and

(3) a statement of the number of claims closed by the self-insurer in the previous fiscal period specifically identifying any such claims whereon a reserve had been established exceeding a value of ten thousand dollars (\$10,000) and reporting the differences between the total loss paid and such reserve.

(c) Summary loss reports shall be compiled relating to each employer, or group of employers, self-insured under the act. The rules on evaluation dates and time of filing as set forth in the Unit Statistical Plan of the principal Workers' Compensation insurance rating organization in the State of North Carolina, as filed with and approved by the commissioner, will govern the schedule of summary loss reporting and the required contents of the reports. Each self-insured employer or group of employers shall maintain true and accurate loss records, and summary loss data by classification shall be submitted to the department.

(d) Each individually self-insured employer and group self-insurers fund shall file annual statements of financial condition with the department. These statements must be certified audits, except that individual self-insured employers may be allowed to submit non-certified audit

reports if the employer, owner, partner or corporate officer, will attest to their being true and correct.

Non-certified interim financial statements may be required by the commissioner at the end of any quarterly fiscal period, whenever he has reason to believe there has been a deterioration in financial condition of the self-insurer which adversely affects the self-insurer's ability to pay expected losses.

(e) All required reports submitted by a service company for any self-insurer it services shall be treated as if they are submitted by the self-insurer directly.

(f) If a self-insurer requires additional time to file a required report, then a request for an extension of time for filing shall be made in writing by the self-insurer or its service company no later than five working days prior to the filing deadline. Extensions will be granted by the department if proof is supplied by the self-insurer or service company that circumstances beyond the control of the self-insurer or service company have made it impossible to file on a timely basis. Such circumstances would include but not be limited to the accidental destruction of the records of the self-insurer or service company, failure of the department to prescribe proper forms, delays caused by acts of God or nature or delays caused by other regulatory processes of the State of North Carolina or United States Government. Clerical errors, personnel turnover, intentional destruction of forms and records by employees of the self-insurer or service company or any delays caused by the inefficiency of the employees of the self-insurer or service company shall not be grounds for extension. Extensions, if granted, shall be in writing with notice mailed to the self-insurer or service company. Such extension will establish a new one-time due date. Repeated late filings of reports may be grounds for revocation of the self-insurance option.

(g) The commissioner may also require the filing of special reports.

.0105 CONTRACTS FOR EXCESS INSURANCE

(a) Any excess workers'

compensation insurance policy submitted in fulfillment of the excess insurance requirements shall be written by either a licensed or surplus lines insurance company.

(b) No contracts or policy of excess liability insurance issued or renewed after the effective date of this Regulation shall be recognized by the department in considering the ability of a self-insurer to fulfill its financial obligations under the Workers' Compensation Act unless such contract or policy:

(1) is not cancellable except upon at least 30 days written notice by registered or certified mail to:

(A) the other party to the policy, and

(B) the department.

(2) is automatically renewable at the expiration of the policy period unless written notice of intent to non-renew is given at least 45 days prior to such expiration, by the party desiring to cancel or not renew the policy or contracts by registered or certified mail to:

(A) the other party to the policy or contract; and

(B) the department.

(3) if it contains any type of commutation clause, provides:

(A) that any commutation effected thereunder shall not relieve the underwriter or underwriters of further liability with respect to claims and expenses unknown at the time of such commutation or in regard to claims apparently closed but which may be subsequently revived by or through a competent authority, and

(B) that in the event the underwriter proposes to redeem any future payments payable as compensation for accidents occurring during the term of the policy by the payment of a lump sum to be fixed as provided in the commutation clause of the policy, such commutation is to comply with the applicable requirements of the Workers' Compensation Act, and;

(4) contains the provision that the excess carrier agrees to be subject to the claims handling standards

established by statute and regulation for carriers and self-insurers.

(c) No more than one named insured or one self-insurered group shall be covered by any contract or policy of excess liability insurance except that an individual self-insurer may include, in addition to a principal named insured, named subsidiary or controlled affiliate corporations or entities. In the case of group self-insurance, the named insured shall be the group self-insurer or its statutory successor interest. Any reinsurance contract issued on any such contract or policy of excess liability shall contain a clause providing that,

(1) such reinsurance is written expressly for, and for the protection of the named insured, and

(2) in the event of the aggregate or specific excess underwriter's going into liquidation or being otherwise unable to pay compensation or other benefits due for injuries to employees of the named insured, the reinsurer(s) if any, of the aggregate or specific excess underwriter(s) will pay directly to the named insured such compensation or other benefits as may be due under the terms of the reinsurance contract(s).

(d) All self-insurers shall file a copy of any excess insurance contracts with the department. Copies of all new contracts or policies of excess insurance complete with all endorsements shall be filed with the department within 90 days after the effective date of the policy. A binder issued by the excess carrier or its authorized agent providing for at least 90 days coverage and specifying the terms of the policy shall be filed with the department within 30 days after the effective date of the policy provided that this proof of excess coverage is not being submitted in support of an application for self-insurance. Excess insurance arrangements, between an excess carrier and a self-insurer, in support of an application for authorization to establish a new self-insurance program shall be evidenced at the time of submission of the application by either:

(1) a binder of coverage issued by an excess carrier or its authorized agent or;

- (2) a cover note from the excess carrier.

It shall not be necessary to file copies of renewal excess policies provided a new policy number is not issued and a renewal endorsement specifying the terms of the policy is submitted to the department within 30 days after the renewal date. The filing deadline in this Paragraph shall not apply if an existing excess policy is cancelled or non-renewed by the excess carrier or the self-insurer, in which case, the self-insurer shall within 30 days of the cancellation or non-renewal date file proof of replacement excess coverage or post additional security acceptable to the commissioner in lieu thereof.

(e) Any self-insurer operating a plan of self-insurance under approval granted prior to the effective date of this Regulation shall within one year or upon any earlier expiration of existing excess contracts of excess insurance, renegotiate replacement coverage to conform to those standards for excess liability insurance contained herein.

.0106 SERVICING REQUIREMENTS

(a) Each self-insurer as a condition of approval to self-insure shall be required to provide proof of compliance with the provisions of this Section regarding its ability to operate a plan of self-insurance, either through in-house capabilities or servicing companies.

- (1) It shall be the sole responsibility of each self-insurer to make provision for competent persons to service its program in the areas of claims adjusting, underwriting, safety engineering and loss control. Each self-insurer shall maintain an employee or claims agent within the state empowered to investigate claims, sign agreements for the payment of compensation, and issue drafts or checks in payment of obligations under the act. Should the self-insurer be unable or unwilling to provide any or all of these services through the use of its own employees, then it shall contract with an outside service company to provide these services on a full-time basis.

- (2) In the case where a self-insurer elects to contract with a service company, the department may use the service company as an intermediary in its dealings with the employer if the department determines that this course of action will result in a more rapid and more accurate flow of information from the self-insurer and aid in employer compliance with this Regulation.

(b) Any self-insurer which contracts with one or more service agents shall through contract provision set for its contractor minimum standards respecting facilities and experienced, qualified personnel in such numbers as will afford timely and adequate services to meet the needs of the self-insurer.

- (1) The self-insurer shall cause to be filed with the commissioner a biographical sketch of the principal officers of the service company including all partners of a partnership and officers of a corporation.
- (2) The self-insurer shall provide or cause to be provided to the commissioner a listing of those experienced and qualified claims personnel employed on a full-time basis, including licensed workers' compensation claims adjusters, to meet the needs of the self-insurer. At least one such licensed claims adjuster shall be situated within the State of North Carolina. Service contracts may provide for such subcontracts to assign a portion of contracted responsibilities if any or all subcontractors also conform to the requirements herein.
- (3) The self-insurer shall demonstrate that it or each selected service agent it employs has a sufficient number of experienced and qualified persons employed on a full-time basis in the areas of loss control and safety engineering to meet the needs of the self-insurer. Service contracts may provide for subcontracts whereby a portion of the contractor's responsibilities are assigned, if the

subcontractor also conforms to the requirements herein.

(4) The self-insurer shall demonstrate that it or each selected service agent it employs has a sufficient number of experienced and qualified persons employed on a full-time basis in the area of underwriting to meet the needs of the self-insurer. Service contracts may provide for subcontractors which assign a portion of contracted responsibilities if the subcontractor also conforms to the requirements herein. In this context, underwriting includes, but is not limited to the overall planning and coordinating of a self-insurance program, the ability to procure bonds and excess insurance, the ability to provide summary data regarding the self-insurer's cost of accidents including the frequency and distribution by type and cause, and the skill to make recommendations to the self-insurer regarding the correction of any deficiencies that arise in the self-insurance program.

(5) The self-insurer shall demonstrate that each selected service agent has a person or if the service company is a corporation, appointed clerk authorized to act in all matters concerning the service company.

(c) In support of its application, the self-insurer shall cause to be submitted summary information concerning the organization and staff of any service agent selected. In addition, detailed resumes of all employees with administrative or professional capacity who will or may be involved in providing services under this Regulation are required on affidavits acceptable to the commissioner.

(d) Each self-insurer contracting with a service company shall file with the commissioner, within 30 days of contract execution, a copy of its service contract. Each contract entered into with a servicing carrier for claims handling shall provide that all claims incurred during the contract period shall be handled until their conclusion.

(e) Replacement contracts

shall be negotiated with only those service agents which will provide no lesser standard of service than the original contract required. Results of any changed method of servicing shall ensure adequate service to claimants and the self-insurer. Each self-insurer shall report to the commissioner termination of a service contract within 10 days of such termination.

(f) Each service contract entered into by a self-insurer shall contain provisions requiring the service company to:

(1) Render to the self-insurer no less frequently than annually a financial statement consisting of a balance sheet and profit and loss statement prepared on the basis of generally accepted accounting principles consistently applied; and

(2) In the event that the service company has contracted for the responsibility of claims handling, render a report of the status of outstanding claims files activity no less frequently than annually or more frequently as otherwise requested by the self-insurer.

(3) The self-insurer shall file all such reports with the department within 30 days of their receipt.

(g) Except as provided in Rule .0104 (a) herein, each self-insurer shall maintain or cause to be maintained within the State of North Carolina, copies of all records sufficient in type and quantity to verify the accuracy and completeness of all reports and documents submitted to the department pursuant to this Regulation. These records shall be open to inspection by representatives of the department during regular business hours. All records shall be retained for periods of time sufficient to ensure their availability for audit purposes. In the absence of other guidelines established by the department, all records shall be retained according to the schedule adopted by the department for similar documents. The location of these records shall be made known to the department as necessary for audit purposes.

(h) Audits, if ordered, shall be performed by accountants or auditors acceptable to the department. The cost of such

audits shall be borne by the self-insurer. After each audit, a written report shall be prepared and submitted to the commissioner with a copy to the self-insurer.

(i) Failure of a self-insurer to make adequate provisions for servicing its self-insurance program of workers' compensation either through in-house capability or one or more qualified and adequately staffed service agent may be grounds for revocation or denial of authority to continue in the option of self-insurance.

(j) Copies of all service contracts pursuant to which services are currently being performed which were executed between any self-insurers and service agent prior to the effective date of this Regulation shall be filed with the commissioner within 30 days following the effective date of this Regulation.

.0107 REVOCATION OR TERMINATION OF SELF-INSURANCE PRIVILEGE

(a) The following may constitute grounds for denial of the right to continue the option of self-insurance:

(1) Failure to comply with regulations by the commissioner.

(2) Deterioration of financial condition adversely affecting the self-insurer's ability to pay expected losses.

(3) Failure to pay any lawful assessment of the North Carolina Self-Insurance Guaranty Association.

(b) All self-insurers shall be afforded a hearing before revocation of a certificate shall occur.

(c) The identity of any employer authorized to self-insure either individually or as a member of a group pursuant to this Regulation shall be determined by the ownership of the entity on the date on which its certificate of authorization is issued. Upon a change in majority ownership, the employer's authority to self-insure shall automatically terminate and the employer must reapply for approval in order to continue the option of self-insurance. To the extent practicable, any such self-insurer shall notify the commissioner in writing prior to the date upon which such a change is effected. The commissioner in his discretion

may extend the termination date in order to provide the employer an appropriate period of time within which to submit the information required pursuant to this Regulation to qualify for a new certificate of authorization.

(d) All self-insurers which shall have been authorized on or permitted to adopt a plan of self-insurance pursuant to Chapter 97 of the North Carolina General Statutes or predecessor statute(s) on or before the effective date of this Regulation, shall submit the data required by this Regulation within the filing deadlines contained herein. The commissioner may, at his discretion, provide additional time for such self-insurers to comply with this Section.

.0108 TRANSITION PROVISIONS

(a) All individual employers and groups approved as self-insurers prior to January 1, 1987 shall comply with terms of this Regulation. Grace periods are expressly provided for such existing self-insurers to achieve compliance with certain provisions of the regulation within the terms of those provisions.

(b) In the event that compliance with the recordkeeping, experience reporting or servicing requirements would create a hardship, any self-insurer approved prior to January 1, 1987 may apply to the commissioner for temporary approval to deviate from specific requirements imposed by this Regulation. Application for such approval shall be made in writing, shall explain in detail the reasons for the request and shall contain a good faith estimate of the period reasonably needed to achieve compliance. Where appropriate, the application may also contain suggested alternatives for achieving substantial compliance with the terms of the requirement during any requested grace period. Approval may be granted by the commissioner in his discretion upon a showing of hardship; such approval shall be in writing, shall set forth a definite period of time within which the applicant shall be in compliance, and shall contain any conditions which the commissioner in his judgment deems necessary. In no event shall such approval be granted if:

- (1) it could create a danger to the applicant's solvency or ability to satisfy its obligations under the act;
- (2) there is reason to believe that the self-insurer has suffered a deterioration of financial condition adversely affecting the self-insurer's ability to pay expected losses; or
- (3) it could impede the department's ability to obtain information relevant to adequate monitoring of the self-insurer's financial condition.

SECTION .0200 - INDIVIDUAL SELF-INSURERS

.0201 APPLICATION

(a) Each employer desiring to become a self-insurer individually shall make application to the department for such privilege on a form prescribed by the department. This application shall be filed with the department at least 45 days prior to the desired effective date of coverage. The application shall contain answers to all questions propounded and shall be a sworn statement. Until all requested data has been filed an application shall be regarded incomplete.

(b) In addition to the filing of the application, compliance with all of the following shall be required:

- (1) The applicant shall provide the department with certified statements of financial condition of current origin and the two next most recent years including, at a minimum, a balance sheet, a profit and loss statement and a statement of change in fund position, prepared on the basis of generally accepted accounting principles consistently applied. Such statements may be non-certified if the self-insurer is a proprietorship, partnership or corporation and if such statements are attested to by an officer or owner therein who beneficially owns more than 50% of the equity in the business. Public employers, including public non-profit employers, may furnish a copy of current year budget or audit report in lieu of a

certified financial statement.

- (2) Except as provided in Rule .0202(d) and (e) of this Subparagraph, specific and/or aggregate excess insurance, with policy limits and retention amounts acceptable to the department, shall be required in each self-insured program.

- (3) Each individual self-insurer shall satisfy the department that either it has, within its own organization, ample facilities and competent personnel to service its own program with respect to claims administration, or shall contract with a service company, to provide these services. If any plan servicing is to be done by the self-insurer, a biographical sketch of those persons responsible for and performing such functions shall be submitted to the department with the application.

(c) Only employers whose modified workers' compensation insurance premium in this State has reached one hundred thousand dollars (\$100,000.00) a year and whose total fixed assets in North Carolina amount to five hundred thousand dollars (\$500,000.00) or more will be eligible to apply for individual self-insurer status. For good cause shown, the Commission may waive the requirement on fixed assets or minimum premium volume. In considering the financial strength and liquidity of the employer to pay normal compensation claims the department will consider, among other evaluative criteria:

- (1) organizational structure and management background;
- (2) profit and loss history;
- (3) source and reliability of financial information;
- (4) compensation loss history;
- (5) number of employees;
- (6) claims administration;
- (7) excess insurance;
- (8) access to excess insurance markets;
- (9) ratio of current assets to current liabilities;
- (10) ratio of tangible net worth to annual self-insurance retention;
- (11) ratio of net worth to annual compensation premium;
- (12) ratio of working capital to total assets;
- (13) ratio of quick assets to

- current liabilities;
- (14) ratio of debt to tangible net worth;
- (15) ratio of total debt to total assets;
- (16) ratio of cash flow to total debt;
- (17) ratio of new sales to total assets;
- (18) ratio of new income to total assets;
- (19) ratio of net income to net sales;
- (20) if a mercantile or manufacturing business, the ratio of net credit sales to average accounts receivable;
- (21) ratio of income before interest and taxes (income) to annual interest expense;
- (22) such other meaningful financial analysis in each instant case, as the commissioner may apply;
- (23) All financial statement formulations shall be provided in such detail as to facilitate application of indicated ratio analyses.

(d) Each employer shall execute and file with the department an agreement, which shall be part of his application, wherein he agrees:

- (1) to fully discharge by cash payment all amounts required to be paid by the provisions of the act;
- (2) to deposit with the commissioner, through the Department of Insurance, cash, acceptable securities or a corporate surety bond issued by an authorized insurance carrier to secure the payment of compensation liabilities as they are incurred.

(e) After considering the application and all supportive data, the department shall either grant authorization or advise the applicant of deficiencies which constitute the basis for denial. If the deficiencies are resolved to the department's satisfaction within 30 days of the department's notice, authorization shall be given to the applicant.

(f) The employer may, at the discretion of the department, be granted additional time to remedy deficiencies in its application in order to meet the requirements for authorization as a self-insurer. A request for an extension of time shall be made in writing by the employer within the 30 day compliance period established in Rule .0201(e). If the department does not receive proof that all requirements for

the self-insured program have been met within the time allotted, the application shall be considered withdrawn.

(g) Upon meeting the requirements of the department, an employer shall receive a written certificate of authorization of his status as a self-insured employer.

.0202 MINIMUM DEPOSIT FUNDS OR BOND: EXCESS INSURANCE REQUIREMENTS

(a) Each individually self-insured employer shall, at the effective date of operation of its plan of self-insurance, deposit with the commissioner, cash, acceptable securities or post a surety bond issued by a corporate surety authorized as an insurance carrier to do surety business in the State of North Carolina in the minimum amount of three hundred thousand (\$300,000.00). A surety bond or security deposit in excess of the minimum may be required by the commissioner based upon the financial status of the self-insurer or if the self-insurer has experienced a deterioration in financial condition.

(b) Funds so held by the commissioner shall be accompanied by appropriate legal instruments to effectively assign right, title and interest in such assets solely for meeting obligations incurred under the act.

(c) If an employer ceases to be a self-insurer, the bond or security deposit required shall be equal to outstanding self-insurers' workers' compensation liabilities plus an amount adequate to cover future loss development, as approved by the department.

(d) All individual self-insurers, except individual public employer self-insurers, with a net worth of at least twenty-five million dollars (\$25,000,000.00) and total fixed assets in North Carolina of at least three hundred million dollars (\$300,000,000.00) shall maintain specific excess insurance unless the department, in its discretion, shall waive such a requirement. Such specific excess insurance shall have a limit of at least two million dollars (\$2,000,000.00). Higher limits may be required for those businesses or entities with a higher risk of multiple injury from a single occurrence. The retention underlying specific excess policies shall

be the lowest retention generally available for businesses or entities of similar size and exposure, but may, at the commissioner's discretion, be established at higher levels consistent with the employers's claims experience and financial condition.

(e) All individual self-insurers except individual public employer self-insurers, with either a net worth of less than twenty-five million dollars (\$25,000,000.00) or total fixed assets in North Carolina of less than three hundred million dollars (\$300,000,000.00) shall maintain aggregate excess insurance unless the commissioner in his discretion shall waive this requirement. The amount of such insurance and the self-insurance retention shall be subject to individual determination by the department.

.0203 FILING OF REPORTS

(a) A report may be submitted on other than a prescribed form with the prior approval of the department. The deadlines for filing of prescribed reports are as provided in this Regulation. Reports other than those with prescribed due dates shall be filed at such times as the department shall establish and excepting reporting related to financial distress, shall not be required to be filed without 30 days prior written notice.

(b) Copies of all final payroll reports showing payrolls by appropriate classification shall be filed.

(c) Each individually self-insured employer shall be responsible for promptly reporting to the department changes in the names and addresses of the businesses it self-insures or intends to self-insure as well as changes in its structure with respect to divisions, subsidiaries and the like. Such changes shall be reported to the department by letter within 10 days after the effective date of the change. Appropriate endorsements to surety bonds and/or excess insurance policies specifying any additional named insureds shall be filed within 90 days of the effective date of the change. Bonds of coverages or cover notes providing for at least 90 days coverage shall be filed within 30 days after the effective date of the change.

(d) Each individually self-

insured employer shall submit a statement of financial condition meeting the criteria established in Rule .0201(b)(1) within six months following the close of its fiscal year.

(e) Within 60 days of the evaluation date of the losses for a coverage period, each individual self-insurer shall submit an annual report of outstanding workers' compensation liabilities. Such report shall show liabilities, excess carrier and other qualifying credits, if any, and net retained liabilities.

(f) All individual self-insurers shall maintain such payroll records as are necessary to complete and verify the accuracy of the annual self-insurers payroll report available for inspection at a location situated within the State of North Carolina, except as provided in Rule .0104(a) herein.

(g) All such payroll and claims records shall be open to inspection by authorized representatives of the department during regular business hours. All such records shall be retained for a period of time sufficient to ensure their availability for audit purposes. In the absence of other guidelines, the records shall be retained according to the schedules adopted by the department for similar documents. The location of these records shall be made known to the department upon the application for self-insurance and at such times thereafter sufficient to keep the department informed of such location.

(h) Each individual self-insurer's payroll and claims records may, at the discretion of the commissioner, be audited. If ordered, such audits shall be performed by accountants or auditors acceptable to the department. The cost of such audits shall be borne by the party examined.

(i) After each audit conducted, a written report shall be prepared and submitted to the Commissioner of Insurance with a copy to the self-insurer, such report to be a part of the annual review for compliance with this Regulation. Any deficiencies cited by the audit report shall be considered in determining whether there may be grounds for the revocation or termination of the self-insurance option.

(j) An individual self-insurer which does not have the proper recordkeeping capability within the state on the effective date of the regulation, shall be in compliance with this Section within one year after such effective date.

(k) Summary Loss Reports formatted by classifications as prescribed in the Unit Statistical Plan of the principal workers' compensation rating organization in this state shall be filed as required by the department.

SECTION .0300 - GROUP SELF-INSURERS

.0301 APPLICATION

(a) Application may be made to provide group coverage and to provide workers' compensation coverage for a group of employers in accordance with the terms of an indemnity agreement. Application shall be made to the department for such privilege on forms prescribed by the department, and this application shall be filed with the department at least 60 days prior to the desired effective date of the coverage. The application shall contain answers to all questions propounded and shall be a sworn statement. Until all requested data has been filed, an application shall be regarded as incomplete.

(b) The application shall include but not be limited to the following:

- (1) a copy of the bylaws of the proposed fund;
- (2) an individual application of each member of the group applying for coverage in the fund on the inception date of the fund;
- (3) a current certified financial statement of each member, including at a minimum, a balance sheet, a profit and loss statement, a statement of change in fund position, and a statement showing the combined net worth of all members applying for coverage on the inception date of the fund. Such combined net worth shall be of an amount that establishes the financial strength and liquidity of the businesses. Public employers and non-profit employers may furnish a copy of a current year budget or audit report in lieu of a certified financial statement;

(4) evidence of the financial ability of the group to meet its obligations under the act;

(5) a composite listing of the estimated standard premium to be developed for each member individually and in total as a group. Payroll data for each of the three preceding years shall be furnished by risk classification;

(6) documented agreement by each member to pay to the fund not less than 25% of estimated annual manual premium not later than the initial day of coverage afforded by the fund;

(7) a confirmation of any required excess insurance by a recognized carrier in an amount estimated acceptable to the commissioner;

(8) designation of the initial board of trustees and/or administrator;

(9) proof of fidelity bonding covering the fund administrator in a form and an amount acceptable to the commissioner;

(10) an indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the act and pay obligations imposed by the act, which shall conform to an indemnity agreement prescribed by the department;

(11) a breakdown of all projected administrative expenses for the fund year in dollar amount and as a percentage of the estimated annual manual premium;

(12) proof provided by the trustees, satisfactory to the department, that the annual gross premiums of the fund will be not less than one hundred thousand (\$100,000.00);

(13) proof, satisfactory to the department, that either the fund has, within its own organization, ample facilities and competent personnel to service its own program with respect to underwriting matters, claims adjusting and industrial safety engineering or shall contract with a service company to provide these services and reporting of the loss data to the department. If any plan servicing is to be done by the self-insurer, a

biographical sketch of those persons, responsible for and performing such functions shall be submitted to the department with an application.

- (14) a letter of assent stipulating the applicants acceptance of membership status in the North Carolina Self-Insurance Guarantee Association.

(c) After considering the application and all supportive data, the department shall either grant authorization or inform the applicant of deficiencies which constitute the basis for denial. If the deficiencies are resolved to the department's satisfaction within 30 days of the department's notice, authorization shall be given to the applicant.

(d) The group may, at the discretion of the department, be granted additional time to remedy the deficiencies in its application in order to meet the requirements for the self-insured program. A request for an extension of the time shall be made in writing by the group within the 30 days compliance period established in Rule .0301(c). If the department does not receive proof that all requirements for the self-insurer have been met within the time prescribed, the application shall be considered withdrawn.

(e) Upon meeting the requirements of the department, the group shall receive a written certificate of authorization as a self-insurer. The group shall submit periodic reports as prescribed by the commissioner.

.0302 MINIMUM SECURITY DEPOSIT OR BOND FOR GROUP SELF-INSURANCE FUNDS: EXCESS INSURANCE REQUIREMENTS

(a) Each group self-insurer's fund shall deposit with the Commissioner of the Department of Insurance, not later than the effective date of coverage, cash, acceptable securities, or post a surety bond issued by a corporate surety authorized as an insurance carrier to do business in the State of North Carolina; the minimum bond or security deposit amount shall be four hundred thousand dollars (\$400,000.00). A surety bond or security deposit in excess of the minimum so determined may be required by the commissioner if he determines that the self-insurer has experienced a

deterioration in financial condition. Funds so held by the commissioner shall be accompanied by appropriate legal instruments to effectively assign right, title and interest in such assets solely for meeting obligations incurred under the act.

(b) The amount of the security deposit or bond shall be determined at least annually based on data submitted by the self-insurer's to the department.

(c) Each group self-insurer shall maintain specific excess insurance with a limit of at least two million dollars (\$2,000,000.00). Self-insurer's funds composed of businesses with a high risk of multiple injury from a single occurrence may be required by the department to maintain higher limits. The retention of the required specific excess coverage shall be the lowest retention generally available for self-insurer's fund with similar exposures and annual premium, but may at the commissioner's discretion, be established at higher levels consistent with the employer's claims experience and financial condition.

(d) Each self-insurers' funds shall maintain aggregate excess insurance unless a security deposit acceptable to the commissioner is made or unencumbered surplus or additional loss funds in amount and asset form acceptable to the commissioner is held by the group self-insurer fund. The aggregate excess limit and aggregate retention for a self-insurer's fund shall be acceptable to the department.

.0303 ADMISSION OF NEW MEMBERS: TERMINATION OF INDIVIDUAL MEMBERS

(a) After the inception date of a fund, prospective new members of a fund shall submit an application for membership to the board of trustees, or its administrator, on a form approved or prescribed by the department. The trustees or administrator may approve the application for membership pursuant to the bylaws of the group self-insurer. The application for membership shall then be filed with the department. Membership shall take effect after approval by the department. Members shall receive a certificate of coverage from the trustees on a

form acceptable to the commissioner.

(b) Individual members may elect to terminate their participation in a group self-insurers' fund and may be subject to cancellation by the group self-insurers' fund pursuant to the bylaws of the fund. However, such termination or cancellation shall not take place for at least 10 days after the department has received notice of the termination or cancellation from the fund. Not less than 30 days notice shall be given to a member prior to any termination by the fund.

.0304 FILING OF REPORTS

(a) Reports as to financial condition, payroll records, coverage, accident experience and compensation payments and other reports as are required to be filed with the department shall be made as follows:

(1) Each group self-insurers' fund shall file with the department within six months after the close of the fund year a statement of financial condition, such statements to include a report of the outstanding workers' compensation liabilities of the group self-insurers' fund including details of the amount and source of all monies recoverable from any third party. Financial statements shall at a minimum be composed of a balance sheet, a profit and loss statement, a statement of change in fund position and a listing of any and all accounts delinquent by more than 90 days.

(2) The commissioner may require quarterly financial disclosures of a similar nature from individual members of a group self-insurers' fund or the fund if he has reason to believe that there has been a deterioration in the financial condition of the fund or of any of the fund's members which adversely affects the fund's ability to pay expected losses.

(3) Summary Loss Reports formatted by classifications as prescribed in the Unit Statistical Plan of the principal workers' compensation rating organization in this state shall be filed as required by the department.

(4) Properly classified and

audited payrolls on each fund member shall be submitted to the department within 60 days after the evaluation date of the summary loss information required in (3) of this Rule.

(5) Quarterly status reports that accurately reflect the financial condition of each open fund year, if required, shall be filed with the department with 45 days after the close of each fund year quarter, such to be signed by the Chairman of the Board of Trustees, or authorized self-insurers fund administrator. A listing of any and all delinquent accounts shall be furnished to the department as part of this report.

(b) Failure or refusal of any group self-insurer to file the above reports within the time limits prescribed by Regulation or any provision of the act may be grounds for revocation or termination of the self-insurance option.

(c) It shall be the responsibility of each group self-insurers' fund member to notify the fund to which it belongs of any changes in the names, addresses, structure and composition of any businesses or subsidiaries which participate in the fund. It shall also be the responsibility of the fund member to notify the fund of any additions or deletions in the businesses or subsidiaries participating in the fund. These changes include changes in majority ownership interest in any business or subsidiary that is covered or that will be covered by the fund. All such changes shall be reported to the fund within 10 days after the effective date of the change. Upon receipt of such notice, each fund shall notify the department in writing, of the changes reported to it by its members.

(d) Except as provided in Rule .0104(a) herein, each fund shall maintain at the office of the fund administrator within the State of North Carolina such records as are necessary to the department pursuant to this Regulation as well as all reports necessary to establish the financial solvency of the group self-insurers' fund unless the fund receives prior written notice to hold the records out of state. If the fund has contracted with a service

company for claims handling, the claims files and related records may be located at the offices of the service company.

(e) All required reports and records shall be open to inspection by authorized representatives of the department during regular business hours. Records shall be retained for a period of time sufficient to ensure their availability for audit purposes. In the absence of other guidelines, the records shall be retained according to the schedule adopted by the department for similar records. The location of these records shall be made known to the department upon the application for self-insurance and at such times thereafter sufficient to keep the department informed of their location.

(f) Each group self-insurers' records may, at the discretion of the commissioner, be audited. If ordered, such audit shall be performed by accountants or auditors acceptable to the department. The cost of such audits shall be borne by the party examined.

(g) After each audit, a written report shall be prepared and submitted to the Commissioner of Insurance with a copy to the group self-insurers fund; such report to be a part of the annual review for compliance with this Regulation. Any deficiencies cited by this report shall be considered in determining if there are grounds for the revocation or termination of the self-insurance option.

(h) Any group self-insurer which does not have the proper recordkeeping capability within the State of North Carolina on the effective date of this Regulation shall be in compliance with this Section within three months after the effective date of this Regulation.

.0305 GROUP SELF-INSURERS FUND RESPONSIBILITIES

(a) The trustees of each authorized fund shall cause to be adopted a set of bylaws or shall enter into a trust agreement which shall govern the operation of the fund. These bylaws or trust agreement shall contain, but not be limited to, the following subjects:

- (1) qualifications for fund membership, including underwriting considerations;
- (2) the method for selecting

the trustees, including the term of office;

- (3) the method for amending the bylaws and plan of operation;

- (4) the method for establishing and maintaining a loss fund, which has previously been approved by the commissioner in writing.

(b) Each group self-insurers' fund shall file a copy of the current bylaws, trust agreement and required written policies with the department. Any changes in bylaws, trust agreement or written policies shall be filed with the department no later than 30 days prior to the date of becoming effective. The department may order the fund to rescind or revoke any bylaw or policy if it is in violation of this Regulation or any applicable law or regulation.

TITLE 13 - LABOR

Notice is hereby given in accordance with G.S. 150B-12 that the Labor - Elevator and Amusement Device Division intends to adopt regulation cited as 13 NCAC 05 .0213 and amend 13 NCAC 05 .0104 and .0301.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 95-110.5.

The public hearing will be conducted at 2:00 pm on November 18, 1986 at Cooper Memorial Bldg., Room 614, 225 N. McDowell Street, Raleigh, North Carolina.

Comment Procedures: People wanting to present oral testimony at the hearing, or who want to have written testimony read at the hearing, should provide a written summary of the proposed testimony to the department by November 13, 1986. Oral presentations will be limited to 15 minutes each. Written statements not presented at the hearing will be accepted by the department until November 28, 1986. All correspondence should be directed to: Sam Wagoner, N.C. Dept. of Labor, Elevator Div., 214 W. Jones St., Raleigh, NC 27603. Interpreters for the hearing impaired will be made available if requested 24 hours in advance.

CHAPTER 5 - ELEVATOR DIVISION

SECTION .0100 - PURPOSE:
DEFINITIONS

.0104 DEFINITIONS

The following definitions shall apply throughout this Chapter:

- (12) "elevator safety code" - American National Standard Safety Code for Elevators Dumbwaiters, and Escalators, and Moving Walks, A 17.1-1971, A17.1-1984 with addenda and modifications as provided in Rule .0301 of this Chapter;

SECTION .0200 - PROCEDURES

.0213 WIRING DIAGRAMS

Wiring diagrams for elevators shall be left in the machine room in a permanently mounted receptacle and shall not be removed except by permission of the Commissioner.

SECTION .0300 - CODES AND STANDARDS

.0301 ELEVATOR SAFETY CODE

(a) The American National Standard Safety Code for Elevators Dumbwaiters, and Escalators, and Moving Walks, A17.1-1971, A17.1-1984, with addenda A17.1a-1972, A17.1b-1973, A17.1c-1974, A17.1a-1985, A17.1b-1985, and A17.1c-1986, and with modifications as provided in (b) of this Rule, has been adopted as the State Elevator Code. Copies of the code are available for inspection at the offices of the division and may be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017. The cost is seventy-five dollars (\$75.00) per book for non-ASME members and sixty dollars (\$60.00) per book for ASME members.

(b) The provisions of the American National Standard Safety Code for Elevators Dumbwaiters, and Escalators, and Moving Walks A17.1 shall be subject to the following modifications:

- (1) Rule +00.4b - Location of Vents. Add paragraph (3) to read: Elevator hoistways shall not be vented into elevator machine rooms.

(1) Rule 100.1c(1) - Observation Elevators With Enclosed Hoistways. Change the last sentence in the second paragraph to read as follows: Hoistways of observation elevators may be enclosed with glass, provided it is laminated

glass conforming to the requirements of ANSI Z97.1.

- (2) Rule +01.1a - Enclosure of Machine Rooms and Machinery. Delete exception (3).

(2) Rule 101.1c(2) -- Observation Elevators Not Fully Enclosed. Change the rule to read as follows: For observation elevators which are not fully enclosed, protection at landings shall be provided as follows:

(A) An enclosure shall be provided which shall extend a minimum of 10 feet above the floor.

(B) The enclosure shall be constructed of unperforated material.

(C) Enclosures shall be located in the general line of the hoistway. Horizontal clearance shall be the same as stated in Section 108.

- (3) Rule +01.3c - Requirements for Means of Access. Add a new exception (2) at the end of paragraph (3) to read as follows: (2) Vertical ladders with handgrips may be used as access to machine rooms and machinery spaces of dumbwaiters and hand powered elevators.

(4) Rule +02.1c - Wiring Methods in Hoistways and Machine Rooms. (A) Change the reference to the "National Electrical Code" to be for the year 1975 instead of 1968 except for clearances around controllers. Clearances around controllers shall remain as specified in the 1968 Electrical Code. (E) Wiring diagrams for elevators shall be left in the machine room in a permanently mounted receptacle and shall not be removed except by permission of the director.

- (5) Rule +02.2 - Exception (2). Change exception (2) to read as follows: Ducts for heating, cooling, ventilating and venting these spaces only may be installed in the machine room and machinery space.

(6) Rule +03.2a - Counterweight Pit Guards. Change the rules to read as follows: Counterweight pit guards must be provided on all exposed sides of counterweights in all pits regardless of the type of

- buffer used or location of buffers except where compensating chains or ropes are attached to the counterweights.
- (7) Rule 104.1 — Guarding of Exposed Equipment. Change the rule to read: All exposed gears, sprockets, sheaves and rollers in the hoistway, machine room, machinery spaces and roller guides on counterweight tops and car tops shall be guarded to protect against accidental contact.
- (8) Rule 106.12(2) — Access to Pits. Change paragraph (2) to read as follows: Access to all elevator pits which do not have a separate pit access door shall be provided by means of fixed vertical ladders of non combustible material. The ladder shall be located on the side of the pit adjacent to the door unlocking device. The top of the ladder shall extend to a height convenient to unlocking the door but shall not be less than 30 inches above the entrance sill. Access to pits of elevators in multiple hoistways may be by means of a single hoistway door and ladder.
- (9) Rule 106.1e and Rule 106.1f — Illumination of Pits and Stop Switches in Pits. Combine both rules to read as follows: The pit light switch and the pit stop switch shall be installed on the same side of the pit access door and shall be located adjacent pit access ladder if a ladder is provided. The pit light switch shall be located 42 inches above the lowest hoistway door sill where access to the pit is provided through the hoistway door. The pit stop shall be located 12 inches above this sill. If access to the pit is provided through a separate access door (walk in pit), the light switch and the pit stop switch shall then be located adjacent to the lock jamb side of the access door and both shall be approximately normal switch height. Where access to the pits of elevators in multiple hoistways is by means of a single access door, the stop switch for each elevator shall be located adjacent to the nearest point of access to its pit from the access door.
- (10) (3) Rule 110.2a -- For Passenger Elevators and Freight Elevators Authorized to Carry Passengers. (A) Delete from the title the words: "and freight elevators authorized to carry passengers." (B) Delete items (4) and (5) of the contents.
- (11) (4) Access to Hoistways for Emergency Purposes. Unlocking devices shall be installed on all hoistway doors on all elevators. The location of these devices shall not exceed six feet ten inches vertically above the entrance sills. In the first sentence change the word "may" to "shall".
- (12) (5) Rule 204.2d -- Side Emergency Exits. Side emergency exits shall not be permitted in elevator cars.
- (13) Rule 207.4 — Carrying of Passengers on Freight Elevators. Eliminate exception (2).
- (14) Rule 211.3 — Operation of Elevators Under Fire or Other Emergency Conditions. Add a note after the title to read as follows: Note: Freight elevators shall be excluded from all requirements of this Rule.
- (15) Rule 300.2 — Hydraulic Machine Rooms and Machinery Spaces. Delete all parts of Rule 300.2. Machine rooms for hydraulic elevators shall comply with Section 101.
- (16) Rule 301.7 — Car Enclosures, Car Doors and Gates and Car Illumination. The exception shall be deleted. Top of car emergency exits shall be required for all car enclosures.
- (17) Rule 301.8 — Car Safeties. Car safeties may be provided conforming to new Rule 301.8 if approved in advance by the director.
- (18) Rule 301.2e — Plunger Stops. Plunger stops shall be tested in accordance with the literal translation of this Rule. Paragraph "c" as added to Rule 100.4 by Supplement A17.1a 1972 will not apply in North Carolina.
- (19) Rule 700.1 — Applicable Requirements. The provisions of Rule 101.3 "Access to Machine Rooms and

Machinery Spaces" shall be applicable to dumbwaiters.

(20) Rule 700.2 — Enclosures for Machine Rooms and Machinery Spaces. Add the third paragraph to the rule to read as follows: Dumbwaiter control equipment shall not be installed in hallways, passageways or any occupied space unless they are installed flush with the wall.

(21) Rule 802.3c — Clearance between Balustrades and Steps. Change rule to read as follows: The clearance on either side of the steps between the skirt guard and the steps shall not be more than 3/16 inch, and the sum of the clearances on both sides shall not be more than 1/4 inch. (No exceptions)

(22) Rule 804.1h — Skirt Obstruction Devices. Skirt switches shall be provided at the upper and lower ends of the escalator.

TITLE 15 - NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend regulation cited as 15 NCAC 2B .0303(c).

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 143-214.1.

The public hearing will be conducted at 7:00 p.m. on November 20, 1986 at Court Room, Transylvania County Courthouse, 12 East Main Street, Brevard, North Carolina 28712.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited to five (5) minutes at the discretion of the hearing officer. For further information or the submission of written comments, contact Bill Kreutzberger, DEM, P.O. Box 27687, Raleigh, NC 27611, (919) 733-5083.

SUBCHAPTER 2B -SURFACE WATER STANDARDS: MONITORING

SECTION .0300 ASSIGNMENT OF STREAM CLASSIFICATIONS

.0303 LITTLE TENN RIVER BASIN AND SAVANNAH RIVER DRAINAGE AREA

(c) The Little Tennessee River Basin and Savannah River Drainage Area Schedule of Classification and Water Quality Standards was amended effective:

- (1) February 16, 1977;
- (2) March 1, 1977;
- (3) July 13, 1980;
- (4) February 1, 1986;
- (5) May 1, 1987.

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend regulation cited as 15 NCAC 2B.0305.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 143-214.1.

The public hearing will be conducted at 12:00 noon on November 21, 1986 at Seven Devils Town Hall, Town of Seven Devils, Route 1, Box 213, Banner Elks, North Carolina 28604.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited to five (5) minutes at the discretion of the hearing officer. For further information or the submission of written comments, contact Bill Kreutzberger, DEM, P. O. Box 27687, Raleigh, NC 27611, (919) 733-5083.

.0305 WATAUGA RIVER BASIN

(c) The Watauga Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) August 12, 1979;
- (2) February 1, 1986;
- (3) May 1, 1987.

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend regulation cited as 15 NCAC 2B .0311.

The proposed effective date of this action is May 1, 1987.

Statutory Authority: G.S. 143-214.1.

The public hearing will be conducted at 7:00 p.m. on November 17, 1986 at Bryan Auditorium, Morton Hall, UNC - Wilmington, 601 South College Road, Wilmington, North Carolina.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited to five (5) minutes at the discretion of the hearing officer. For further information or the submission of written comments, contact Bill Kreutzberger, DEM, P. O. Box 27687, Raleigh, NC, 27611, (919) 733-5083.

.0311 CAPE FEAR RIVER BASIN

(b) The Cape Fear Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) December 14, 1980;
- (4) August 9, 1981;
- (5) April 1, 1982;
- (6) December 1, 1983;
- (7) January 1, 1985;
- (8) August 1, 1985;
- (9) December 1, 1985;
- (10) February 1, 1986;
- (11) May 1, 1987.

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Soil and Water intends to amend regulations cited as 15 NCAC 6C .0404; .0407 and adopt 6E .0101 through .0108.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 139-4(d); 139-25; 139-54(2); 139-54(5); 143-215.70; 143-215.74; 143B-294; 156-61; 156-71.

The public hearing will be conducted at 10:00 a.m. on November 14, 1986 at Ground Floor Hearing Room, Archdale Bldg., 512 N. Salisbury Street, Raleigh, N. C.

Comment Procedures: Persons desiring to comment on the proposal are requested to give notice thereof on or before the hearing date. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The record of proceedings will remain open for 30 days following the hearing to receive additional written statements. Additional information concerning the hearing or the proposal may be obtained by contacting: Mr. Douglas Lewis, Division of Soil and Water Conservation, P.O. Box 27687, Raleigh, North Carolina 27611, (919) 733-2302.

SUBCHAPTER 6C - SMALL WATERSHED PROGRAM

SECTION .0400 - SMALL WATERSHED GRANTS

.0404 ENGINEERING FEES

(a) State grants may cover up to fifty percent of the non-federal costs resulting from engineering fees and expenses, except when incurred under drainage laws. however, state grants may not cover any of the costs associated with Drainage District's engineers fees and expenses.

(b) State grants may not cover any of the non-federal costs resulting from engineering fees and expenses associated with the development of benefit assessments. feasibility studies or other planning work.

(c) State grants may not cover construction inspection provided by the local sponsor when in addition to that provided by the Soil Conservation Service.

.0407 CONSTRUCTION COST FOR WATER MANAGEMENT PURPOSES

(a) State grants may cover up to 66 2/3 percent construction costs for water management (drainage and irrigation), excluding all land rights acquisition costs. The following are considered construction costs for water management:

- (1) public utilities relocation or modification costs; and
- (2) public and private road relocation or modification costs.

(b) The following are

considered construction costs for water management:

(1) public utilities relocation or modification costs; and

(2) public and private road relocation or modification costs.

(c) The following are not considered construction costs for water management:

(1) administrative costs;

(2) construction inspection; and

(3) legal fees.

SUBCHAPTER 6E - AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL

.0101 PURPOSE

This document describes the operating procedures for the Division under the guidance of the Commission implementing the Agriculture Cost Share Program for Nonpoint Source Pollution Control. Procedures and guidelines for participating Districts are also described. The purpose of the voluntary program is to reduce the delivery of agricultural nonpoint source (NPS) pollution into the water courses of the state.

.0102 DEFINITIONS FOR SUBCHAPTER 6E

(a) Agriculture Nonpoint Source (NPS) Pollution means pollution originating from a diffuse source as a result of agricultural activities related to crop production, animal production units and land application of waste materials.

(b) Allocation means the annual share of the state's appropriation to participating Districts.

(c) Annual Agreement (AA) means a binding agreement between the District and the applicant that provides for cost sharing for installing best management practices and maintenance of the best management practices.

(d) Applicant means a person(s) who applies for best management practice cost sharing monies from the District.

(e) Average Costs means the calculated cost, determined by averaging recent actual costs and current cost estimates necessary for best management practice implementation. Actual costs include labor, supplies, and other direct costs required

for physical installation of a practice.

(f) Best Management Practice (BMP) means a structural or nonstructural management based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters.

(g) Conservation Plan of Operation (CPO) means a written plan scheduling the applicant's decisions concerning land use, and both cost shared and non-cost shared BMP's to be installed and maintained on the operating unit.

(h) Cost Share Agreement means an annual or long term agreement between the applicant and the District which defines the BMP's to be cost shared, rate and amount of payment, minimum practice life, and date of BMP installation. The agreement also states that the recipient will maintain and repair the practice(s) for the specified minimum life of the practice.

(i) Cost Share Incentive (CSI) means a predetermined fixed annual payment paid to an applicant for implementing a BMP in lieu of a full 75% cost share.

(j) Cost Share Rate means a cost share percentage paid to an applicant for implementing BMP's.

(k) Detailed implementation Plan means the plan approved by the Commission that specifies the guidelines for the current Program Year; including, BMP's that will be eligible for cost sharing and the minimum life expectancy of those practices.

(l) District BMP means a BMP designated by a District to reduce the delivery of agricultural NPS pollution and which is reviewed and approved by the Division to be technically adequate prior to funding.

(m) Encumbered Funds means monies from a District's allocation which have been committed to an applicant after initial approval of the cost share agreement.

(n) Full Time Equivalent (FTE) means 2.080 hours per annum which equals one full time technical position.

(o) In-kind Contribution means a contribution by the applicant towards the implementation of BMP's. In-kind contributions shall be approved by the District and can include but not be limited to labor, fuel, machinery use, and

acceptable supplies and materials.

(p) Landowner means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year to year in land, but does not include an estate at will or by sufferance in land.

Furthermore, a governmental or quasi-governmental agency such as a drainage district or a soil and water conservation district, or any such agency, by whatever name called, exercising similar powers for similar purposes, can be a landowner for the purposes of these rules if the governmental agency holds an easement in land.

(q) Long Term Agreement (LTA) means a binding agreement between the District and the applicant that includes the plan of operation and which sets forth cost sharing for BMP installation and maintenance. The LTA shall have a maximum contract life of three years for BMP installation. The system installed must bring the soil loss to "T" and the District must perform an annual status review during the installation period.

(r) Program Year means the period from July 1 through June 30 for which funds are allocated to Districts.

(s) Proper Maintenance means that a practice(s) is being maintained such that the practice(s) is successfully performing the function for which it was originally implemented.

(t) Soil Loss Tolerance (T) means the maximum allowable annual soil erosion rate to maintain the soil resource base, depending on soil type.

(u) Strategy Plan means the annual plan for the N. C. Agriculture Cost Share Program for Nonpoint Source Pollution Control to be developed by each District. The plan identifies pollution treatment needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective District.

(v) Technical Representative of the District means a person designated by the District to act on their behalf who participates in the planning, design, implementation and inspection of BMP's. These

practices shall be technically reviewed by the Division. The District Chairman shall certify that the technical representative has properly planned, designed and inspected the BMP's.

(w) Unencumbered Funds means the portion of the allocation to each District which has not been committed for cost sharing by the first Wednesday of March of the current fiscal year.

.0103 ALLOCATION GUIDELINES AND PROCEDURES

(a) The Commission will allocate the cost share funds to the Districts in the designated program areas. To receive fund allocations, each District designated eligible by the Commission is required to submit an annual strategy plan to the Commission at the beginning of each fiscal year. Funds may be allocated to each District for any or all of the following purposes: cost share payments, cost share incentive payments, technical assistance, or administrative assistance. Use of funds for technical and administrative assistance must follow the guidelines set forth in .0106 of this Subchapter.

(b) Funds will be allocated to the Districts at the beginning of the fiscal year. Districts will be allocated monies based on the identified level of agricultural related nonpoint source pollution problems and the respective District's BMP installation goals and available technical services as demonstrated in the District annual strategy plan. The allocation method used for disbursement of funds is based on the relative position of each respective District for those parameters established by the Division and approved by the Commission. These parameters are designed to reflect the agricultural nonpoint source problems, the conservation needs, and the technical assistance available in the area of the State included in the current Program Year funding. Each District is assigned points for its relative position for each parameter and also for technical assistance hired under the 50:50 cost share (Rule .0106 of this subchapter) and the points are totalled and proportioned to the total dollars available under the current Program year funding.

(1) Parameter Points +

District Technical
Assistance Points = Total
Points

(2) Percentage Total Points
Each District x Total
Dollars Available =
Dollars Available to Each
District

(3) Because of other program
restraints or increased
demands for funds a District
may request fewer (Group A)
or more (Group B) dollars
than are available.

Thus,
Dollars Available Per
District, (2) - Dollars
Requested by the District =
Difference

(A) Group A Districts
request less than amount
(2).

(B) Group B Districts
request more than amount
(2).

(4) The dollars in excess of
Group A District requests
are apportioned to group B
Districts in the following
manner:

Total of Those Funds in
Excess of that Requested by
Group A Districts x
Percentage of Total Excess
Requests by each Group B
District = Amount Added to
Group B Request

(5) Therefore, there are two
categories of Districts in
the allocation method:

(A) Those receiving 100
percent of request (Group
A).

(B) Those receiving less
than 100 percent of
requests (Group B) who
receive amounts (2) plus
(4).

(c) Ninety-five percent of the
total program funding will be
allotted to the District
accounts in the initial
allocation. The Division will
retain 5 percent of the total
funding in a contingency fund to
be allocated at a later date as
determined by the Commission.

(d) Cost share funds allocated
to a District during a fiscal
year that have not been
encumbered to an agreement by
the first Wednesday of March of
that fiscal year will be subject
to recall by the Commission.

(e) Districts with
unencumbered funds as of the
first Wednesday of March of the
current fiscal year may request,
in writing to the Commission, to
retain those funds. Requests
must be received by the
Commission, to retain those
funds. Requests must be
received by the Commission no

later than the second Wednesday
of March of the current fiscal
year.

(f) Districts may apply for
additional funds to the
Commission by written
application to be received no
later than the second Wednesday
in March.

(g) The amount of recalled
funds shall be divided among the
eligible Districts applying for
reallocation based on projected
needs as outlined in the written
applications received by the
Commission as stated in Rule
.0103(e) of this subchapter.
The Division will notify the
Commission by the third
Wednesday in March of the
current balance of funding and
the District's requests to
retain present allocation and/or
to obtain new funds. The
Commission shall decide the
amount of funds reallocated to
each District and the District's
will be notified of their final
allocation by the fourth
Wednesday of March.

(h) CPO's that encumber funds
under the current year must be
submitted to the Division by
9:30 a.m. on the first Wednesday
in June.

.0104 BEST MANAGEMENT PRACTICES ELIGIBLE FOR COST SHARE PAYMENTS

(a) BMP's eligible for cost
sharing will be restricted to
those BMP's listed in the
Detailed Implementation Plan
approved by the Commission for
the current Program Year.

(b) BMP definitions and
specifications are set forth
periodically in the USDA-Soil
Conservation Service Technical
Guide, Section IV., Raleigh,
North Carolina or by the
Division for District BMP's.
BMP specifications appropriate
for the current Program Year
shall be met or exceeded in
order for an applicant to
qualify for cost sharing.
Provisions for exceeding BMP
design specifications by an
applicant should be considered
at the time of application with
the District. The applicant
shall assume responsibility for
all costs associated with
exceeding BMP design
specifications.

(c) The minimum life
expectancy of the BMP's shall be
listed in the Detailed
Implementation Plan. Practices
designated by a District shall
meet the life expectancy
requirement established by the
Division for that District BMP.

.0105 COST SHARE AND INCENTIVE PAYMENTS

(a) Cost share and incentive payments can be made through LTA's or AA's between the District and the applicant. It shall be the policy of the Commission to encourage the use of LTA's over the use of AA's.

(b) For all practices except those eligible for CSI, the state will provide 75 percent and the applicant 25 percent of the average cost for BMP installation. In-kind contributions by the applicant shall be included in the applicants' cost share contribution. In-kind contributions shall be specified in the agreement for cost sharing and shall be approved by the District.

(c) Payments for BMP's restricted to the CSI shall be limited to a maximum of three years per farm.

(d) Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments will be updated and revised annually by the Division for approval by the Commission.

(e) The maximum total cost share payments to an applicant shall be limited to \$15,000 per year. Additional payments may be made based on a District's request to, and approval by the Commission.

(f) Cost share payments to implement BMP's under this program can be combined with other funding programs, as long as the combined cost share rate does not exceed the amount set forth in Rules .0105 (b) and (c) of this subchapter.

(g) Use of cost share payments is restricted to land located within the county approved for funding by the Commission. In the situation where an applicant's farm is not located solely within a county, the entire farm, if contiguous, will be eligible for cost share payments.

(h) Cost share payments shall not be used on or for local, state or federal government land unless approved by the Commission.

.0106 TECHNICAL ASSISTANCE FUNDS

(a) The funds available for technical assistance shall be allocated by the Division based on needs as expressed by the District and needs to accelerate the installation of BMP's in the

respective District. Each District may use these monies to fund new positions or to accelerate present technical assistance positions. A maximum of \$15,000 of N. C. Agriculture Cost Share program funds may be used per FTE technical position with the District matching 50 percent of the total position cost in order to qualify. Priorities for funding positions are assigned based on the rating system as follows:

(1) Position presently funded by program technical assistance funds . . . 50 pts.

(2) Position needed in District not presently receiving technical assistance monies

(A) Position needed to qualify for cost share allocation 15 pts.

(B) Position needed to further accelerate program 10 pts.

(3) Position needed to further accelerate Program in District presently receiving technical assistance monies for another position . . . 5 pts.

(4) Position needed to further accelerate treatment of identified critical non-point source pollution problem (i.e., intense animal waste, PNA drainage area, Nutrient Sensitive Watershed, etc.) . . . 15 pts.

(b) Technical assistance funds may be used for salary, benefits, social security, field equipment and supplies, office rent, office equipment and supplies, postage, telephone service, travel and mileage. A maximum of \$2,500 per year for each FTE technical position is allowed for mileage charges.

(c) Minimum requirements for technical positions shall be one of the following:

(1) associated degree in engineering, agriculture, forestry or related field, or

(2) high school diploma with two years experience in the fields listed in Rule .0106, (c), (1), of this subchapter or

(3) appropriate experience in the fields listed in Rule .0106, (c), (1) of this subchapter.

(d) Cost shared positions must be used to accelerate the Program activities in the District. A district technician cost shared with Program funds may work on other activities as delegated by the field office

supervisor but the total hours charged to the Program by field office personnel must equal or exceed those hours funded through the Program. Also, these hours must be in addition to those hours normally spent in BMP planning and installation by District personnel.

(e) District technicians may be jointly funded by more than one District to accelerate the Program in each participating District. Each District must be eligible for cost sharing in the Program. Requests for funding (salary, FICA, insurance, etc.) of a shared position must be presented to the Division by all concerned Districts and the Division will cost share to the billing District at a 50-50 rate based on the portion of the FTE provided each respective District. A shared position must be officially housed in one specific District and cost share for support items (office rent, telephone, etc.) will be paid to one District only.

(f) Funds, if available, will be allocated to each participating District to provide for administrative costs under this program. These funds shall be used for clerical assistance and other related program administrative costs and will be matched with in-kind funds of an equal amount from the District.

.0107 COST SHARE AGREEMENT

(a) The landowner shall be required to sign the agreement for all practices other than conservation tillage and land application of animal wastes. An applicant who is not the landowner may submit a long term written lease or other legal document indicating control over the land in lieu of the landowners signature, provided the control runs the length of the LTA. Signature on the agreement constitutes responsibility for BMP maintenance and continuation.

(b) As a condition for receiving cost share and/or cost share incentive payments for implementing BMP's, the applicant shall agree to continue and maintain those practices for the minimum life as set forth in the Detailed Implementation Plan, effective the date the BMP's are implemented.

(c) As a condition for receiving cost share payments, the applicant shall agree to submit a soil test sample for

analysis and follow the fertilizer application recommendations as close as reasonably and practically possible. Soil testing shall be required a minimum of every two years on all cropland affected by cost share payments. Failure to soil test shall not constitute noncompliance with the cost share agreement.

(d) As a condition for receiving cost share payments for waste management systems, the applicant shall agree to have the waste material analyzed once every year to determine its nutrient content. If the waste is land applied, the applicant shall agree to soil test the area of application and to apply the waste as close as reasonably and practically possible to recommended rates. When waste is land applied, waste analysis and soil testing shall be conducted annually.

(e) The technical representative of the District shall determine if the practice(s) implemented have been installed according to specifications as defined for the respective Program Year in the USDA-Soil Conservation Service Technical Guide, Section IV, Raleigh, North Carolina, or according to specifications approved by the Division for District BMP's. The District shall be responsible for making an annual spot check of five percent of all the participating farms to ensure proper maintenance. Waste management systems will receive annual status reviews for five years following implementation.

(f) If the technical representative of the District determines that practice(s) for which cost sharing was received have been destroyed or have not been properly maintained, the farmer will be notified that the cost shared practices must be repaired or reimplemented within one calendar year.

(g) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the Division a prorated amount as shown in Table 1 and/or 100 percent of the cost share incentive payments received during the current fiscal year.

Table 1

PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE OF COST SHARE PAYMENTS

Age of Practice	Percent Refund
0	100
1	95
2	89
3	82
4	74
5	65
6	55
7	44
8	31
9	17
10	0

(h) An applicant who has been found in noncompliance and who does not agree to repair or reimplement the cost shared practices shall have the right to appeal to the District. Appeals must be received by the District within 30 days of issuance of the notice of noncompliance. The Districts have 60 days to respond to appeals. In situations in which the applicant and the District continue to disagree after the appeals process, both parties may within 30 days of the district appeal decision jointly request the Commission informally review the case. To invoke this method of review, both parties must stipulate that the Commission decision is binding and that all further reviews and appeals are waived and abandoned.

(i) An applicant shall have a maximum of 180 days to make repayment to the Division following the final appeals process.

(j) The inability to properly maintain cost shared practices or the destruction of such practices through no fault of the applicant shall not be considered as noncompliance with the cost share agreement.

(k) When land under cost share agreement changes owners the new landowner shall be strongly encouraged by the District to continue and maintain practice(s) previously implemented.

.0108 DISTRICT PROGRAM OPERATION

(a) As a component of the annual strategy plan developed by each District, both cropland and animal operations will be prioritized according to pollution potential. Technical and financial assistance will be targeted to facilitate BMP implementation on the identified critical areas.

(b) Priority by the District may be given to implementing systems of BMP's

which provide the most cost effective reduction of nonpoint source pollution.

(c) All applicants shall apply to the District and complete the necessary forms in order to receive cost share payments.

(d) The District shall review each application and the feasibility of each application. The District shall review and approve the evaluation and assign priority for cost sharing. All applicants shall be informed of cost share approval or denial.

(e) Upon approval of the application by the District, the applicant and the District shall enter into a cost share agreement. The cost share agreement shall list the practices to be cost shared with state funds. The agreement shall also include the average cost of the recommended practice(s), cost incentive payment of the practice(s), and the expected implementation date of the practice(s). CPO's will be developed and become a part of the cost share agreement.

(f) Upon completion of practice(s) implementation, the technical representative of the District shall notify the District of compliance with design specifications.

(g) Upon notification, the District shall review the CPO. Upon approval, the District shall certify the practices in the CPO and notify the Division to make payment to the applicant.

(h) Upon receipt of a quarterly statement from the District, the Division shall reimburse to the District the appropriate amount for technical and clerical assistance.

(i) The District shall be responsible for and approve all BMP inspections as set forth in Rule .0107, (e) of this subchapter to insure proper maintenance and continuation under the cost share agreement.

(j) Districts shall provide quarterly reports on program accomplishments to the Commission on October 15, January 15, April 15 and an annual report on July 15.

(k) The District will be responsible for keeping appropriate records dealing with the program.

Notice is hereby given in

accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to amend regulation cited as 15 NCAC 10F .0314.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 75A-3; 75A-15.

The public hearing will be conducted at 9:00 a.m. on November 17, 1986 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of the hearing will be open for receipt of written comments from October 20, 1986, to 5:00 p.m. on November 21, 1986. Such written comments must be delivered or mailed to the Wildlife Resources Commission, 512 N. Salisbury Street, Archdale Bldg., Raleigh, NC 27611.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0314 NEW HANOVER COUNTY

(a) Regulated Areas. This Rule applies to the following portions of Bradley Creek, Lee's Cut, Motts Channel and the Intracoastal Waterway waters in New Hanover County:

(5) that part of Myrtle Grove Sound at the Dolphin Bay boat docks extending 150 yards to either side of Intracoastal Waterway marker No. 157.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

Notice is hereby given in accordance with G.S. 150B-12 that Division of Economic Opportunity intends to amend regulation cited as 15 NCAC 16D .0201.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 113-28.21, et seq.; 143B-10(b).

The public hearing will be conducted at 10:00 a.m. on November 14, 1986 at fifth floor conference room, Archdale Bldg., 512 N. Salisbury Street, Raleigh, N.C.

Comment Procedures: All persons interested are invited to attend. Comments may be submitted in writing or may be presented orally at the hearing. Oral presentations which exceed three minutes are requested to have a written copy to be filed with the hearing clerk. Further details of the proposed change may be obtained by writing or calling: Mr. James Forte, Director, Div. of Economic Opportunity, P. O. Box 27687, Raleigh, NC 27611, (919) 733-2633.

CHAPTER 16 - DIVISION OF ECONOMIC OPPORTUNITY

SUBCHAPTER 16D - COMMUNITY ACTION PARTNERSHIP PROGRAM

SECTION .0200 - ADMINISTRATIVE POLICIES AND PROCEDURES

.0201 GENERAL PROVISION

(c) A maximum of fifty percent of funds allocated to an eligible agency may be used to defray the administrative expense of programs other than those operated with Community Services Block Grant funds. Such programs must have purposes consistent with those of the Community Services Block Grant.

Administrative expense of other programs shall include direct or indirect costs associated with general management and support functions of a specific program or project. Such costs must:

(1) be necessary and reasonable for the proper and efficient administration of the program or project;

(2) conform to any limitations or exclusions set forth in this Subchapter;

(3) be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances; and

(4) not be allocable to or included as a cost to any other program financed with federal, state, or local funds in either the current or a prior period.

TITLE 20 - STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-12 that the Local Government Commission intends to amend regulation cited as 20 NCAC 3 .0703.

The proposed effective date of this action is March 1, 1987.

Statutory Authority: G.S. 159-30(c) (6c).

The public hearing will be conducted at 10:00 a.m. on November 19, 1986 at Conference Room, Room 100, Albemarle Building, 325 N. Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Persons making oral presentations must provide written copy of comments to Hearing Officer. Written comments sent to APA Coordinator, Department of State Treasurer, 325 N. Salisbury Street, Room 100, Raleigh, North Carolina 27611 until November 19, 1986.

CHAPTER 3 - LOCAL GOVERNMENT COMMISSION

SECTION .0700 - MUTUAL FUND FOR LOCAL GOVERNMENT INVESTMENT

.0703 MINIMUM FUND STANDARDS

(a) Moneys of the fund may be invested only in securities permitted by G.S. 159-30. The maximum maturity of any security purchased shall not exceed 48 months from the date of purchase he set by the Secretary for each portfolio, provided that the maturity shall not exceed seven (7) years.

TITLE 21 - LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the Board of CPA Examiners intends to adopt and amend regulations cited as 21 NCAC 8F .0302; 8F .0305; 8F .0401 and 21 8F .0402.

The proposed effective date of this action is April 1, 1987.

Statutory Authority: G.S. 93-12(3); 93-12(5).

The public hearing will be conducted at 9:00 a.m. on December 17, 1986 at N. C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605.

Comment Procedures: Any person interested in this rule may present written or oral comments relevant to the action proposed at the public rule-making hearing. Anyone planning to present comments at the hearing should notify the Executive Director at the Board offices by Monday, December 15, 1986. Written statements not presented at the public hearing should be delivered to the Board offices not later than 12:00 noon on Friday, January 16, 1987.

SUBCHAPTER 8F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

SECTION .0300 - EDUCATIONAL REQUIREMENTS FOR EXAMINATION

.0302 EDUCATION

(a) Each applicant must submit proof, acceptable to the board, in the form of college or university transcripts, that he has successfully completed, or shall complete at the end of the school term which begins before the examination date, at least 60 semester hours course work or the equivalent number of quarter hours, in a college or institution of higher learning accredited by one of the regional associations accrediting institutions of higher education.

(b) In addition, each applicant must submit proof, acceptable to the board, in the form of college or university transcripts, that he has successfully completed a course of study in accountancy at the end of the school term which begins before the examination date. A course of study in accountancy shall consist of a minimum of 24 semester hours, or the equivalent in quarter hours, which shall include the following:

- (1) four courses in principles of accounting;
- (2) one course in cost accounting;
- (3) one course in auditing; and
- (4) one course in income tax.

(c) Such course of study in accountancy must be completed while enrolled in any of the following schools:

- (1) Any college or university accredited by the Southern Association of Colleges and Schools, or comparable regional accrediting association;
- (2) any member school of the

American Assembly of
Collegiate Schools of
Business

(3) any member university of the Association of American Universities, or university extension courses and correspondence schools which are specifically approved by the board, in writing; or

(4) any other school, college or university specifically approved by the board in writing.

(d) An applicant who has completed the requirements of 21 NCAC 8F .0302(a) and (b) at a school which does not meet the requirements of 21 NCAC 8F .0302(c) shall be deemed to have completed said requirements at a school, college or university approved by the board by completion at a school meeting the requirements of 21 NCAC 8F .0302(c)(1), (2) or (3) of an additional 15 semester hours, or the equivalent in quarter hours, including six semester hours, or the equivalent in quarter hours, of courses in accounting.

(a) G.S. 93-12(5) provides for three ways to demonstrate the possession of adequate education. one approach includes the possession of a bachelor's degree. A second approach includes two years of college, plus experience in the public practice of accountancy under the direct supervision of a certified public accountant. The third approach is to take the special examinations approved by the Board and described in 21 NCAC 8F .0304.

(b) Each applicant not applying under 21 NCAC 8F .0304 must submit transcripts to prove that the educational requirements have been met. Transcripts shall show grades received on all courses completed and all degrees awarded. An official transcript bears the seal of the school and the signature of the registrar or other appropriate official.

(c) The board may approve an application to take the examination prior to the awarding of a bachelor's degree, and prior to any work experience, if the applicant reasonably expects to receive such a degree within 90 days after the last day of the examination. however, if the applicant fails to receive the degree within the specified time, the grades shall not be awarded.

(d) If the second approach

mentioned in (a) above is selected by the applicant, the completion of two years in an accredited college or university or its equivalent shall mean that the applicant has successfully completed, or reasonably expects to complete at the end of the school term which begins before the examination date, at least 60 semester hours of course work, or the equivalent in quarter hours, in a school, college or university accredited by one of the regional accrediting associations. The 60 semester hours shall include the concentration in accounting described in 21 NCAC 8F .0305. However, if the applicant fails to complete the necessary 60 semester hours within the specified time, the grades shall not be awarded.

(e) A regional accrediting association includes the Southern Association of Colleges and Schools and comparable accrediting associations as indicated in the Education Directory - Colleges and Universities, which is published by the U. S. Department of Education, National Center for Education Statistics. Colleges and universities which are members of the American Assembly of Collegiate Schools of Business are deemed to have standards substantially equivalent to a regionally accredited institution.

(f) A concentration in accounting shall be completed prior to the date of application. However, the board may approve an application to take the examination if the applicant reasonably expects to complete the concentration in accounting at the end of the school term which begins before the examination date. If the applicant fails to complete the concentration in accountancy within the specified time, the grades shall not be awarded. See Rule .0305 below for a definition of concentration in accounting.

(g) An applicant who has completed the bachelor's degree or the concentration in accounting at a school which does not meet the requirements of G.S. 93-12(5) and paragraph (e) of this Rule shall be deemed to have completed the requirements at a school, college or university approved by the board by:

(1) completion, at a school meeting the requirements of paragraph (e) of this Rule,

of 10 additional semester hours (or equivalent) of graduate courses, including six semester hours (or equivalent) in graduate accounting courses, plus enrollment for a advanced degree; or

(2) completion, at a school meeting the requirements of paragraph (e) of this Rule, of 15 additional semester hours (or equivalent) or undergraduate courses, including six semester hours (or equivalent) in undergraduate accounting courses.

.0305 CONCENTRATION IN ACCOUNTING

(a) A concentration in accounting shall include:

- (1) at least 24 semester hours, or the equivalent in quarter hours, of undergraduate accountancy courses; or
- (2) at least 16 semester hours or the equivalent in quarter hours, of graduate accountancy courses; provided, that a graduate level course is defined as one open exclusively to graduate students; or
- (3) a combination of undergraduate and graduate courses which would be equivalent to (1) or (2).

(b) In recognition of differences in the level of graduate and undergraduate courses, one semester (or quarter) hour of graduate study in accountancy will be considered the equivalent of one and one-half semester (or quarter) hours of undergraduate study in accountancy.

(c) Up to six semester hours, or the equivalent in quarter hours, of the 24 semester hour requirement may be accepted from income tax courses completed in law schools.

(d) In cases where an accountancy course duplicates another course previously taken, only the semester (or quarter) hours of one of the courses will be counted in determining if the applicant has met the requirements of this Rule in satisfactorily completing a course of study in accountancy.

(e) If an applicant does not possess a bachelor's degree, or does not expect to receive such a degree within 90 days after the last day of the examination, then the applicant's concentration in accounting shall include;

- (1) four courses in principles of accounting,
- (2) one course in cost accounting,
- (3) one course in auditing, and
- (4) one course in income tax.

SECTION .0400 - EXPERIENCE

.0401 GENERAL EXPERIENCE REQUIREMENTS

(a) Each applicant must submit proof, acceptable to the board, in the form of an experience affidavit that he has had either:

- (1) two years experience in the field of accountancy under the direct supervision of a certified public accountant; or
- (2) Five years experience teaching accounting courses as described in 21 NCAG 8F .0409; or
- (3) five years experience in the practice of accountancy; or
- (4) a combination of experience which shall consist of a total of five years for persons having less than two years of experience under the direct supervision of a certified public accountant.

(b) Applicants not meeting the educational requirements stated in 21 NCAG 8F .0402 shall have two years experience in the practice of public accountancy under the direct supervision of a certified public accountant in addition to the other experience requirements specified in 21 NCAG 8F .0401(a).

(c) a masters or more advanced degree in accounting, tax law, economics or business administration from an accredited college or university as provided in 21 NCAG 8F .0302(c) may be substituted for one year of the experience requirement specified in 21 NCAG 8F .0401(a).

(d) The board will accept 1,600 hours of part-time experience worked in a period exceeding 12 months as the equivalent to one year of experience. part-time experience which totals less than 1,600 hours will not be accepted by the board. A person working less than 35 hours per week shall be deemed to be working part-time. Temporary employment shall mean working 35 hours or more per week and shall be counted in full.

(e) Supervision shall mean

having jurisdiction (i.e. oversight authority) over the process of planning, coordinating, guiding, inspecting, controlling, and/or evaluating on a continuing basis the activities and accomplishments of the employee under his or her command; having the power of direction and decision in implementing activities to meet the objectives of his or her stewardship; having authority delegated by higher management to hire, transfer, suspend, recall, promote, assign, or discharge an employee under his or her charge or to recommend such action through the proper administrative chain of command. Direct supervision shall mean the person supervised is next below in the usual line of authority or is in a staff position reporting to the supervisor. Direct supervision also means a clear-cut personal connection to the employee being supervised, marked by a first-hand association without an intervening position of influence.

(a) G.S. 93-12(5) lists experience requirements required of all applicants for a CPA certificate. 21 NCAC 8F .0402 indicates the experience that is required prior to applying to take the CPA examination. 21 NCAC 8F .0409 describes acceptable teaching experience.

(b) A masters or more advanced degree in accounting, tax law, economics or business administration from an accredited college or university as provided in 21 NCAC 8F .0302(c) may be substituted for one year of the experience requirement specified in 21 NCAC 8F .0401(a). no other degrees may be used as substitutes for the experience requirement.

(c) The board will accept 1,600 hours of part-time experience worked in a period exceeding 12 months as the equivalent to one year of experience. Part-time experience which totals less than 1,600 hours will not be accepted by the board. A person working less than 35 hours per week shall be deemed to be working part-time. Temporary employment shall mean working 35 hours or more per week and shall be counted in full.

(d) Supervision shall mean having jurisdiction (i.e. oversight authority) over the process of planning, coordinating, guiding,

inspecting, controlling, and/or evaluating on a continuing basis the activities and accomplishments of the employees under his or her command; having the power of direction and decision in implementing activities to meet the objectives of his or her stewardship; having authority delegated by higher management to hire, transfer, suspend, recall, promote, assign, or discharge an employee under his or her charge or to recommend such action through the proper administrative chain of command. Direct supervision shall mean the person supervised is next below in the usual line of authority or is in a staff position reporting to the supervisor. Direct supervision also means a clear-cut personal connection to the employee being supervised, marked by a first-hand association without an intervening position of influence.

.0402 EXPERIENCE PRIOR TO EXAMINATION

Although a certificate shall not be issued until an applicant meets the experience required in 21 NCAC 8F .0401, the board may permit an applicant otherwise eligible to take its examination and may issue examination grades, without experience only if the applicant fulfills the following educational requirements:

- (1) He or she must have received at least a bachelors degree, or may reasonably expect to receive such a degree within 90 days after the date of the examination, except as specifically approved by the board, from one of the following schools:
 - (a) any college or university accredited by the Southern Association of Colleges and Schools, or a comparable regional accrediting association;
 - (b) any member school of the American Assembly of Collegiate Schools of Business; or
 - (c) any member university of the Association of American Universities.

- (2) he or she must have successfully completed a course of study in accountancy, or shall complete such a course of study in accountancy at the end of the school term which begins before the examination date, in a school, college,

or university qualifying under 21 NCAC 8F .0402(1)(a), (b), and (c). A "course of study in accountancy" shall mean either of the following:

(a) an undergraduate concentration in accountancy consisting of a least 24 semester hours, or the equivalent in quarter hours, of undergraduate accountancy courses; or

(b) a graduate concentration in accountancy consisting of at least 16 semester hours, or the equivalent in quarter hours, of study in graduate accountancy courses; a graduate accountancy course being defined as an accountancy course open exclusively to graduate students; or

(c) a combination of undergraduate and graduate courses in accountancy which would be equivalent to 21 NCAC 8F .0402(2)(a) or (b). In recognition of differences in the level of graduate and undergraduate accountancy courses, one semester (or quarter) hour of graduate study in accountancy will be considered the equivalent of one and one-half semester (or quarter) hours of undergraduate study in accountancy in making the computation under this Subsection to determine if a combination of graduate and undergraduate study is the equivalent of 21 NCAC 8F .0402(2)(a) and (b).

(d) The board will accept six semester hours, or the equivalent in quarter hours, for income tax courses completed in law schools as part of the 24 semester hours in accounting required by 21 NCAC 8F .0402(2)(a).

(3) An applicant who has completed the course of study required by 21 NCAC 8F .0402 at a school which does not meet the requirements of 21 NCAC 8F .0402(1)(a), (b) or (c) shall be deemed to have completed said requirements at a school, college or university approved by the board by:

(a) completion at a school meeting the requirements of 21 NCAC 8F .0402(1)(a), (b) or (c) of 10 additional semester hours, or the equivalent in quarter hours, including six semester hours, or the equivalent in quarter hours, of graduate

accounting courses and enrollment for an advanced degree; or

(b) completion at a school meeting the requirements of 21 NCAC 8F .0402(1)(a), (b) or (c) of 15 additional semester hours, or the equivalent in quarter hours, of undergraduate courses, including six semester hours, or the equivalent in quarter hours, of undergraduate courses in accountancy.

(4) In cases where an accountancy course duplicates another accountancy course only the semester (or quarter) hours of one of the courses will be counted in determining if the applicant has met the requirements of this Rule in satisfactorily completing a course of study in accountancy.

(a) Each applicant for examination submitting education credentials described in 21 NCAC 8F .0302(d) must have proof of two years experience in the practice of public accountancy under the direct supervision of a certified public accountant. Direct supervision is defined at 21 NCAC 8F .0401(d). The other experience requirements stated in the statute will not be required prior to applying to take the exam.

(b) Each applicant for examination submitting education credentials described in 21 NCAC 8F .0304 must complete the experience requirements specified in 21 NCAC 8F .0401 prior to applying to take the CPA examination.

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Dental Examiners intends to amend regulations cited as 21 NCAC 16M .0001 and 16M .0002.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 90-39 and 90-232.

The public hearing will be conducted at 9:00 a.m. on November 15, 1986 at 3325 Executive Drive, Raleigh, N. C. at the offices of the Board.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed

rule may file a notice with the Board at least ten days prior to the proposed hearing. Any person may also file a written submission containing data, comments or arguments at any time within ten days after the hearing.

CHAPTER 16 - DENTAL EXAMINERS

SUBCHAPTER 16M - FEES PAYABLE

.0001 DENTISTS

The following fees shall be payable to the North Carolina State Board of Dental Examiners:

- (1) Application for General Dentistry Examination.....\$75.00
- (2) Application for Instructor's License and Examination.....\$50.00
- (3) General Dentistry and Instructor's License Renewal.....\$40.00
- (4) Application for Provisional Licensure — General Dentistry.....\$50.00
- (5) Application for Intern Permit or renewal thereof.....\$50.00
- (6) Certificate of licensee to a resident dentist desiring a change to another state or territory.....no chg.
- (7) Licensure upon clinical examination of practitioner of another state.....\$75.00
- (8) Reinstatement of a license to resume practice.....\$50.00

From time to time, the Board will establish a schedule of fees for license application and renewal, as authorized by G.S. Section 90-39. A schedule of current fees may be obtained from the Board's office.

.0002 DENTAL HYGIENISTS

The following fees shall be payable to the North Carolina State Board of Dental Examiners:

- (1) Application for examination.....\$30.00
- (2) Renewal certificate.....\$25.00
- (3) Restoration of a license\$30.00
- (4) Application for provisional licensure.....\$30.00
- (5) Certificate to a resident dental hygienist desiring to change to another state or territory.....no chg.

From time to time, the Board will establish a schedule of fees for license application and renewal, as authorized by G.S.

Section 90-232. A schedule of current fees may be obtained from the Board's office.

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Mortuary Science intends to adopt regulation cited as 21 NCAC 34 .0126.

The proposed effective date of this action is March 1, 1987.

Statutory Authority: G.S. 90-210.23(a).

The public hearing will be conducted at 10:00 a.m. on November 18, 1986 at the Office of State Board of Mortuary Science, 412 North Wilmington Street, Raleigh, N.C. 27601.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing, or in writing prior to the hearing by mail addressed to Charles M. Phillips, Executive Secretary, State Board of Mortuary Science, 412 North Wilmington Street, Raleigh, N.C. 27601.

CHAPTER 34 - MORTUARY SCIENCE

SECTION .0100 - GENERAL PROVISIONS

.0126 SOLICITATION DEFINED
Solicitation, as the term is used in G.S. 90-210.25(e)(1)d, shall be interpreted to mean an uninvited, intentional, direct or indirect contact with the family, next of kin or one who has custody of a person who is deceased or near death, or with a person who is near death, for the purpose of procuring the right to provide funeral services or merchandise, either immediately or at a future date, for the deceased or the person near death.

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Community Colleges intends to amend regulation cited as 23 NCAC 2D.0301.

The proposed effective date of this action is March 1, 1987.

Statutory Authority: G.S. 115D-3; 115D-5 and 115D-54.

The public hearing will be conducted at 1:00 p.m. on November 19, 1986 at Third Floor Conference Room, Education Building, Raleigh, North Carolina 27603-1712.

Comment Procedures: Any interested person may present written or oral statements relevant to proposed rule 23 NCAC 2D.0301. A time limit of ten minutes per person may be imposed for oral presentations depending upon the number of persons making presentations. Individuals who plan to make oral presentations must give their remarks in writing to the hearing officer. Written statements not to be presented at the hearing should be directed before November 17, 1986, to the following address: G. Herman Porter, Hearing Officer, Department of Community Colleges, State Education Building, Raleigh, North Carolina 27603-1712.

CHAPTER 2 - COMMUNITY COLLEGES

SUBCHAPTER 2D - INSTITUTIONS: FISCAL AFFAIRS

SECTION .0300 - BUDGETING: ACCOUNTING: FISCAL MANAGEMENT

.0301 OPERATING BUDGET REQUESTS: DISTRIBUTION OF FUNDS

(a) General

(1) One full-time equivalent (FTE) student represents sixteen student membership hours per week for 11 weeks or 176 student membership hours for each quarter enrolled. Refer to 23 NCAC 2D .9323 (a) for additional information regarding calculating and reporting student membership hours.

(2) Rule 23 NCAC 2D .0324

sets forth the specific categories for which FTE shall be calculated. The operating budget funds referred to in this Rule refer only to the following "regular budget" categories:

(A) curriculum

- (i) college transfer,
- (ii) general education,
- (iii) technical,
- (iv) vocational,
- (v) ~~adult basic~~

~~education.~~

(B) extension continuing education.

- (i) adult high school,
- (ii) occupational extension,
- (iii) other extension,

(iv) adult basic education.

(3) Projections of full-time equivalent (FTE) students will be based on the following:

(A) Curriculum FTE

projections will be based on the three-quarter ~~traditional~~ academic year (fall, winter, spring).

(B) Extension Continuing education FTE projections

will be based on the full four-quarter fiscal year (summer, fall, winter, spring).

(C) Projections will be made, program by program, utilizing actual FTE for the most recent a five-year period, using a linear regression ~~(straight line)~~ projection method.

(D) The State Board may adjust the linear regression projections based on additional factors brought to its attention.

(E) The State Board will adopt an official projection of FTE.

(b) Appropriation Requests

(1) Continuation Budget

Requests. The continuation budget request will be based on the number of FTE and amount per FTE currently appropriated and increases in the continuation budget as directed by the Office of State Budget and Management. Also included in the continuation budget requests will be continuing programs that are funded apart from the formula budget such as new industry, human resources development, ~~adult high school,~~ etc.

(2) Expansion Budget

Requests. The expansion budget request may consist of, but is not limited to, the following items:

(A) an adjustment in the number of FTEs in existing programs based on the difference between the official FTE projections of the State Board and the existing level of FTEs requested in the continuation budget,

(B) an adjustment in expenditure per FTE,

(C) additional funding for new and special programs of instruction ~~and for funding FTEs in these new programs.~~

(c) Allotment Reserve. A

reserve will be requested from the General Assembly and amounting to one percent of FTEs appropriated for both curriculum and extension programs shall be retained by the State Board for the purpose of making later allocations for enrollment growth, innovative programs, new concepts, etc.

(d) Formula distribution of funds for the operating budget will be based on the following factors:

(1) Base allotments

(A) Base Budgets for each institution shall not be based on less curriculum or extension FTE respectively than funded the previous fiscal year provided the actual curriculum or extension enrollment in the previous calendar year did not decline below that of the preceding calendar year. Provided further, that the appropriation of curriculum and extension FTE from the General Assembly is equal to the previous years' appropriations of FTE.

(A) Base Budgets for the coming fiscal year for curriculum programs shall be based on the actual fall FTE, actual winter FTE, and the projected spring FTE from the current fiscal year. The projected spring FTE will be certified by the institutional president at the end of the 20 percent reporting date. Continuing education programs' base budget for the coming year shall be based on the actual spring FTE, actual summer FTE, actual fall FTE, and actual winter FTE for the latest available quarters. If sufficient FTE is not provided by the General Assembly, each institution will receive a prorata reduction.

(B) The Base Budget for an institution which reflected a decline of curriculum or extension FTE in the previous calendar year, will be based on a prorata reduction equal to that reflected in the decline, provided however, that each institution shall be protected to a level of 90% in the initial

allotment of the preceding fiscal year.

(B) (E) Additional FTE available shall be distributed to each institution by curriculum or extension continuing education program area on a prorata basis of the institution's actual FTE as compared to the total system FTE.

(C) The Base Budget for an institution which has been chartered for more than two years shall be allotted funding based on no less than 400 FTE based upon the prorata share of actual earned FTE for the preceding calendar year.

(C) To the extent the projected curriculum FTE for the spring quarter does not reflect the actual spring quarter FTE, adjustments will be made to increase or decrease the FTE at the time the 3/3 Rule adjustments are made.

(D) To assure a level of FTE equal to that of actual realized FTE (to the extent funds are available) growth FTE shall be distributed to each institution, which in the latest 3 quarters for curriculum and 4 quarters for extension, for which data is available, have had an increase in FTE in excess of the prior year's budgeted FTE in the curriculum or extension program area.

(D) Institutions whose curriculum enrollment, based on the current year's fall quarter projected to reflect academic year enrollments based on a five-year history is projected to decline more than three percent (3%) of budgeted curriculum enrollment, shall return to the Department of Community Colleges within 30 days of notification of any projected decline the funds in excess of three percent (3%). Institutions whose curriculum enrollments, based on the current year's fall quarter projected to reflect academic year enrollments based on a five-year history, is projected to exceed by three percent

(3%) the budgeted curriculum enrollments shall receive additional allocation to fund the projected increased curriculum enrollments, insofar as funds are available within the enrollment account.

(E) Additional FTE available shall be distributed to each institution by curriculum or extension program area on a prorata basis of the institution's actual FTE.

(E) (F) In the event sufficient FTE is not provided to meet all the above provisions in Parts A- E C of this Rule, the Department will first apply Part A. Parts A, B, and C. If additional funds are available, Parts D and E (in that order of priority) will be applied.

(2) Funds will be allotted to each institution on the following formula:

(A) instruction

(i) curriculum

(I) instructional unit instructors -- one per 22 FTE rounded to the nearest 1/10 unit position at the currently appropriated salary unit value;

(II) employee benefits --based on appropriated levels for social security, retirement, and hospitalization;

(III) other costs per curriculum FTE based on appropriated levels for travel and supplies and materials;

(ii) extension

(I) instructors --one per 22 FTE rounded to the nearest 1/10 position at the currently appropriated salary unit value;

(II) employee benefits --based on appropriated levels for social security;

(III) other costs per FTE based on appropriated levels for travel and supplies and materials;

(ii) continuing

education: adult basic education:

(I) instructional unit--one per 22 FTE rounded to the nearest

1/10 unit at the currently appropriated salary unit value;

(II) employee benefits --based on appropriated levels for social security, retirement, and hospitalization;

(III) other costs per curriculum FTE based on appropriated levels for travel and supplies and materials;

(iii) other continuing education

(I) instructional unit--one per 22 FTE rounded to the nearest 1/10 unit at the currently appropriated salary unit value;

(II) employee benefits --based on appropriated levels for social security;

(III) other costs per continuing education FTE based on appropriated levels for travel and supplies and materials;

(B) instructional support and administration:

(i) A base allotment for each institution:

(I) salaries-- president (1.0) on president's salary schedule; senior administrators (4.0) at the current salary unit value; instructional support (3) personnel (2.6) at the current salary unit value; clerical personnel (3) (3.3) at the current salary unit value;

(II) employee benefits --based on appropriated levels for social security, retirement and hospitalization;

(III) other costs--a sum of twenty thousand two hundred four dollars (\$20,204) thirteen thousand dollars (\$13,000) for travel for trustees, president, administrators, and support personnel; institutional dues; graduation expenses; etc.;

(ii) An additional allotment for each curriculum and extension

continuing education FTE for each institution will be based on the following:

(I) Salaries:

Senior Administrators
- (.04) Positions per
100 FTE At Current
Salary Scale;
Administrators of
Programs - (.173)
Positions per 100
Curriculum FTE At
Current Salary Scale
and (.030) Positions
per 100 Continuing
Education FTE At
Current Salary Scale;
Instructional Support
- (.775) Positions
per 100 Curriculum FTE
At Current Salary
Scale and (.552)
Positions per 100
Continuing Education
FTE At Current Salary
Scale; Tech
/Paraprofessionals -
(.50) Positions per
100 FTE At Current
Salary Scale; Clerical
personnel - (.70)
Positions per 100 FTE
At Current Salary
Scale.

(I) Salaries--senior
administrators-- 2.0
per 1,250 FTE (to the
nearest 1/10 position)
at the current salary
unit value;
instructional support
personnel-- 6.0 per
1,000 FTE (to the
nearest 1/10 position)
at the current salary
unit value;
clerical
personnel-- 6.0 per
1,000 FTE (to the
nearest 1/10 position)
at the current salary
unit value;

(II) employee benefits
--based on
appropriated levels
for social security,
retirement and
hospitalization;

(III) other costs per
FTE based on
appropriated levels
for travel, supplies
and materials,
postage, printing and
binding, magazines and
newspapers, equipment
repairs, service and
maintenance contracts,
advertising and
publicity, etc;

(IV) JTPA
administrative
FTE--class-size
projects supported by

JTPA funds will earn
budget FTE for
additional allotments
for administrators
only.

TITLE 25 - OFFICE OF STATE
PERSONNEL

Notice is hereby given in
accordance with G.S. 150B-12
that the Office of State
Personnel intends to amend
regulation cited as 25 NCAC 1D
.0504(b)(2).

The proposed effective date of
this action is February 1, 1987.

Statutory Authority: G.S. 126-4.

The public hearing will be
conducted at 9:00 am on December
18, 1986 at 101 West Peace,
Raleigh, North Carolina.

Comment Procedures: Interested
persons may present statements
orally or in writing at the
hearing or in writing prior to
the hearing by mail addressed to
Drake Maynard, Office of State
Personnel, 116 West Jones
Street, Raleigh, North Carolina
27611.

SUBCHAPTER 1D - COMPENSATION

SECTION .0500 - SEPARATION

.0504 REDUCTION IN FORCE

(b) Agency Responsibility.

(2) It is the employing
agency's responsibility to
inform the employee of
separation as soon as
possible and to inform the
employee of the priority
reemployment consideration
available. The agency must
provide employees with a
minimum of two weeks notice
of separation. For persons
desiring priority
consideration, the releasing
agency must submit an
application to the Office of
State Personnel requesting
priority consideration. If
the employee does not want
assistance in finding
another State job, the
agency should get a written
statement to this effect and
share a copy with the Office
of State Personnel.

Notice is hereby given in
accordance with G.S. 150B-12
that the Office of State
Personnel intends to repeal
regulations cited as 25 NCAC 1D
.0507 and .0508.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 126-5.

The public hearing will be conducted at 9:00 am on December 18, 1986 at 101 West Peace Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to Drake Maynard, Office of State Personnel, 116 West Jones Street, Raleigh, North Carolina 27611.

.0507 PRIORITY REEMPLOYMENT CONSIDERATION (REPEALED)

.0508 PRIORITY REEMPLOYMENT CONSIDERATION:
(EFF. JULY 1, 1985)
(REPEALED)

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel intends to amend regulation cited as 25 NCAC 1D .0509(1)(f), (2)(a)(ii), (2)(g), (2)(i) and (3).

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 126-4(10); 143-27.2.

The public hearing will be conducted at 9:00 am on December 18, 1986 at 101 West Peace Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to Drake Maynard, Office of State Personnel, 116 West Jones Street, Raleigh, North Carolina 27611.

.0509 SEVERANCE SALARY CONTINUATION

(1) Eligible Employees

(f) Permanent employees, scheduled to be separated by reduction-in-force, may accept a temporary state position and remain eligible to receive severance salary continuation in accord with this policy.

(g) A permanent employee scheduled to be separated through reduction-in-force

may decline a lower level position and retain eligibility for severance salary continuation.

(2) Amount and Method of Payment

(a)

(ii) Age Adjustment Factor
For employees who exceed 40 years of age, 2.5% of the annual base salary will be added for each year over 40 years of age not to exceed 21 years (age 61). Employees qualify for the age adjustment factor at 40 years of age. To compute the amount of the adjustment, 2.5% of the annual base salary will be added for each full year over 39 years of age not to exceed 22 years (age 61). In the event an employee is not eligible for either social security benefits or retirement benefits under the Teachers' and State Employees' Retirement System, the employee may receive credit for age beyond age 61. The total age adjustment factor payment is limited by the service payment and cannot exceed the total service payment.

Note: At age 62, a career employee is usually eligible for social security benefits as well as benefits under the Teachers' and State Employees' Retirement System both of which have been contributed to by the State.

Example: Age 63; Salary - \$24,000/year; 20 years
Computation

(a) Service factor:
 $\$2000/\text{month for 4 months}$
 $= \$8000$

(b) Age adjustment factor: $\$24000 \times .025 \times (61-40) = \12600

However, the age adjustment factor cannot exceed the service factor so the age factor is limited to \$8000. The total payment is \$16,000 distributed over 4 months.

Example: Age 63; Salary - \$24,000/year; 20 years
Computation

(a) Service factor:
 $\$2000/\text{month for 4 months}$
 $= \$8000$

(b) Age adjustment factor: $\$24000 \times .025 \times (61-39) = \$13,200$

However, the age adjustment factor cannot exceed the service factor so the age factor is limited to \$8000. The total payment is \$16,000 distributed over 4 months.

(f) An employee who is reemployed in any permanent position with the State while receiving severance salary continuation will no longer be eligible for such pay effective on the date of reemployment. The reemploying agency shall be responsible for determining if the former employee is receiving severance salary continuation payments.

(i) Funds for severance salary continuation will be provided as directed by the Office of State Budget. G.S. 143-27.2 provides that severance wages are authorized by the Director of the Budget, upon written request of a state agency and with recommendation by the State Personnel Director. All severance payments are contingent upon the availability of funds. If funds are not sufficient for full payment to all employees, distribution of available funds should be on a pro-rata basis such that all employees would receive a pro-rated payment in accordance with their age and service. In cases where the agency is not paying the full amount, the agency shall submit documentation signed by the agency head to the State Personnel Director and the State Budget Director.

(3) For employees who receive severance salary continuation, agencies shall indicate on the separation form, Forms PD-105, the amount and calculation of such payments.

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel intends to adopt regulations cited as 25 NCAC 1D .0510; .0511; .0512; .0513; .0514; .0515; .0516 and .0517.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 126-5.

The public hearing will be conducted at 9:00 a.m. on

December 18, 1986 at 101 West Peace Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to Drake Maynard, Office of State Personnel, 116 West Jones Street, Raleigh, North Carolina 27611.

.0510 PRIORITY REEMPLOYMENT CONSIDERATION

(a) Priority reemployment consideration shall be provided to:

(1) Employees who have met the minimum service requirements for permanent status and who occupy or accept and are subsequently separated, for reasons other than just cause, from positions designated exempt as confidential or policy-making pursuant to G.S. 126-5(c)(2) and G.S. 126-5(d)(1).

(2) Employees separated due to shortage of funds or work, abolishment of a position or other material changes in duties or organization by the process commonly known as reduction-in-force. An employee who is separated at the end of a time-limited appointment is not eligible for priority consideration.

(b) In affording priority reemployment consideration, employees separated from policy-making/confidential exempt positions for reasons other than cause shall receive first priority over employees separated by reduction-in-force.

(c) The intent of priority consideration for employees separated from exempt positions is to enable a return to the career service at a salary grade equal to that held in the most recent subject position. For employees separated through reduction-in-force, the intent is to restore employment at a salary grade equal to that held prior to separation. In either instance, the salary grade and not the salary rate is the controlling factor.

.0511 REDUCTION IN FORCE PRIORITY CONSIDERATION

Employees separated through reduction in force shall receive priority reemployment consideration for a period of

twelve months. The following conditions apply:

- (1) Within the agency or institution where the separation occurred (parent agency), an employee separated through reduction in force shall be offered any available vacant position of a salary grade level equal or below that held before separation, provided the employee meets the qualifications for the position and could perform the job in a reasonable length of time, including normal orientation and training given any new employee. The only exception preventing an offer in this instance would be the preexistence of an "understudy" who had been groomed by the agency to fill the vacant position, within a formally understood, written arrangement, and structured plan of development.
- (2) Within all other State agencies and institutions, the employee shall be interviewed, and where qualified for the vacant position, shall be offered the position prior to employing anyone who is not a permanent employee.
- (3) An employee separated through reduction-in-force must claim priority reemployment consideration at the time of separation through notification to the parent agency or institution personnel office or the priority is forfeited.
- (4) For employees separated from trainee or flat-rate positions, who are eligible for priority reemployment consideration, the salary grade for which priority is to be afforded shall be determined as follows. For employees in flat rate positions, the salary grade level shall be the salary grade which has as its mid-point (Step 5B), a rate equal to the flat rate salary of the eligible employee. For employees in trainee status the salary grade level shall be the salary grade of the full class.
- (5) An employee separated through reduction-in-force while actively possessing priority reemployment consideration shall retain the current priority for the remainder of the twelve month priority period. A new

priority period shall then be afforded at the salary grade and status of the most recent separation. The length of this additional priority period shall be equal to the time between the expiration dates of the old and the new priority, assuming that the second twelve month period started on the date of the most recent separation.

- (6) Priority reemployment consideration will not be afforded to an employee who, after receiving formal notice of impending reduction-in-force, retires or applies for retirement prior to the separation date. An employee who applies for retirement after being separated through reduction-in-force may exercise priority reemployment consideration.
- (7) Priority reemployment consideration is intended to provide a return to employment at an equal employment status to that held at the time of separation. Acceptance of a position at a lower appointment status will not affect priority. Employees separated from permanent full-time positions shall have priority to permanent full-time and permanent part-time positions. Employees separated from permanent part-time positions shall have priority to permanent part-time positions only.
- (8) Employees who have priority reemployment status at the time of application for a vacant position, and who apply during the designated agency recruitment period, will be continued as priority applicants until the selection process is complete.
- (9) An employee scheduled to be separated through reduction-in-force may decline a position at a lower level and retain his/her priority.
- (10) An employee scheduled to be separated through reduction-in-force, or with priority status, may not decline interviews or offers for positions within 35 miles of the employee's original work station without losing his/her priority, if the position is at an appointment status and salary grade equal

to or greater than that held at the time of separation.

(11) An employee with priority reemployment consideration may accept, in accordance with his/her priority, a permanent full-time or permanent part-time state position at a salary grade lower than that held at the time of separation, or a temporary position at any level, and retain such consideration for the remainder of the twelve months priority period.

(12) An employee with priority reemployment consideration may accept employment outside state government or in a state position not subject to the State Personnel Act and retain such consideration through the twelve months priority period.

(13) Priority reemployment consideration is considered to be satisfied and is terminated when an employee separated or scheduled to be separated accepts a position equal to or greater than the salary grade level and employment status of the position from which separated or an employee's period of twelve months priority reemployment consideration ends.

.0512 POLICY-MAKING/ CONFIDENTIAL EXEMPT PRIORITY CONSIDERATION

(a) Employees removed from policy-making/confidential exempt positions, for reasons other than cause, shall receive priority reemployment consideration as follows:

(1) An eligible employee with 10 or more years cumulative service in subject positions, including the immediately preceding 12 months prior to placement in an exempt position, shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, at the same grade and step as his/her most recent subject position. The reassignment must be within a 35 mile radius of the exempt position from which separated. If an employee is offered a reassignment which meets these criteria and refuses to accept, the priority is terminated.

(2) An eligible employee

who has the minimum service requirements for permanent status [G.S. 126-5(c)(1)], but less than 10 years cumulative service in subject positions prior to placement in an exempt position, shall be permitted a one-time reemployment priority, to be exercised by the employee within one year following the effective date of his/her separation. Upon notice to the agency that priority is being requested, the employee shall be offered any available, non-exempt position for which he/she has formally applied and is qualified for, when the position applied for is equal to or below the salary grade of the most recent subject position held prior to separation; provided, however, that a prior offer may be made to a person qualified under Section 1 above, or to a current state employee with greater cumulative state service.

(b) As exercised by the employee, this priority consideration shall expire when a formal offer is extended for employment in the position being applied for. A vacant position will not be considered available, for purposes of this policy, if an "understudy" has been groomed by the agency to fill it, under a pre-existing, formally understood, written arrangement, within a structured plan of development.

(c) If an eligible policy-making exempt employee applies for and accepts a position through the regular, non priority selection process, which is at a salary grade below that held in his/her most recent subject position, that person shall retain the one-time priority for higher level positions for the remainder of the twelve month period.

(d) If an eligible person accepts employment outside State Government, the one-time priority shall be continued through the one-year maximum at the person's request.

.0513 CUMULATIVE STATE SERVICE

Cumulative service is the total amount of state service in positions subject to the State Personnel Act. It is not necessary that this service be continuous.

.0514 REEMPLOYMENT AFTER

PRIORITY EXPIRATION

If an appointment has not been received within the one year priority period, a person previously eligible for priority reemployment will be considered for reemployment under regular applicant procedures.

.0515 AGENCY RESPONSIBILITIES

(a) It is the employing agency's responsibility to inform the employee of separation as soon as possible and to inform the employee of the priority reemployment consideration to be afforded. If the employee does not want assistance in finding another State job, the agency should get a written statement to that effect, and file a copy with the Office of State Personnel. For employees wishing to claim priority reemployment consideration, the separating agency must submit an application to the Office of State Personnel requesting priority consideration. The application may be submitted as soon as the separation is known, and designated as "reduction-in-force" or "policy-making exempt".

(b) It is also an agency responsibility to notify the Office of State Personnel in writing when:

- (1) An eligible person accepts a position which satisfied his/her priority reemployment consideration.
- (2) A person separated by reduction-in-force is offered a lateral transfer or promotion and refuses, unless the position offered is more than thirty-five miles from the employee's original work station.
- (3) An eligible employee separated from a policy-making or confidential exempt position exercises his/her priority and then refuses an employment offer.
- (4) Other conditions which would satisfy or terminate an eligible employee's priority reemployment consideration are discovered.

.0516 OFFICE OF STATE PERSONNEL RESPONSIBILITY

(a) The Office of State Personnel will maintain the names and applications of eligible persons and will provide a priority referral system which places eligibles before agencies and institutions

with available vacancies, such that priority consideration may be granted.

(b) The Office of State Personnel will also provide outplacement assistance to separated employees who wish to seek employment in the private sector. Such assistance will typically include resume preparation, personal marketing, and interview skills, along with Employment Security Commission coordination for placement referral.

.0517 LEAVE AND SALARY INCREASES

(a) Vacation Leave. Employees are paid in a lump sum for accumulated vacation leave.

(b) Sick Leave. Accumulated sick leave at the time of separation shall be reinstated if reemployment occurs within three years.

(c) Leave-Without-Pay Option. To enable additional benefits, employees scheduled to be separated shall, upon their request, be placed in a leave-without-pay status.

(d) Salary Increases. If reemployed during the twelve month period, time earned toward a salary increase shall be considered in determining eligibility for the next increase.

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-12 that the Office of Administrative Hearings intends to adopt regulations cited as 26 04 .0001-.0008.

The proposed effective date of this action is February 1, 1987.

Statutory Authority: G.S. 7A-751; 150B-11.

The public hearing will be conducted at 10.00 a.m. on November 14, 1986 at 706-08 Hillsborough Street, Board of Nursing Conference Room, Second Floor, Raleigh NC 27603.

Comment Procedures: Data, opinions, and arguments concerning these rules must be submitted by November 14, 1986 to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, NC 27604, Attn: Sharon Morris.

CHAPTER 4 - 706 DEFERRAL

.0001 INTRODUCTION

(a) The Equal Employment Opportunity Commission (EEOC) designated the North Carolina State Office of Administrative Hearings as a 706 Deferral Agency effective August 27, 1986. The North Carolina General Assembly has designated the Office of Administrative Hearings as the State's 706 Deferral Agency in G.S. 7A-751.

(b) The Office of Administrative Hearings (OAH) hereby accepts deferral by the EEOC over the following classes of charges filed with the EEOC in North Carolina:

All charges alleging race, color, sex, religion, or national origin discrimination in employment, or retaliation for opposition to such alleged discrimination, filed by previous and current state employees or applicants for employment who were or are subject to North Carolina General Statutes Section 126-16 and Article 8 of Chapter 126, North Carolina General Statutes, which have been filed with the EEOC within the time limits set forth in North Carolina General Statutes Section 126-38.

.0002 CONTENT AND PROCEDURE

(a) Any person wishing to file a complaint as defined in Paragraph (b) of Rule .0001 of alleged discrimination with the EEOC shall address a petition to:

District Director
EEOC
5500 Central Avenue
Charlotte, N. C. 28212

(b) The petition shall include the following information:

(1) Full name, address and telephone number (work and home), of person making the charge;

(2) Full name and address of person or agency against whom the charge is made (the respondent);

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices.

(A) A statement of specific harm and dates the harm occurred;

(B) For each harm - a statement specifying the act, policy or practice which is alleged to be unlawful;

(4) For each act, policy or practice alleged a statement of the facts which lead the person to believe the act, policy or practice is discriminatory;

(5) The approximate number of employees of the respondent employer;

(6) A statement disclosing whether proceedings involving the alleged unlawful employment practices have been commenced before a state or local agency charged with the enforcement of fair employment practice laws and if so, the date of such commencement and the name of the agency;

(7) Notwithstanding the other provisions of this Subsection (b), a charge is sufficient when the commission receives from the person making the charge a written statement sufficiently precise to identify the parties and to describe the action complained of.

(c) The EEOC will examine the petition and determine its appropriateness. If appropriate, it will be assigned an EEOC docket number and forwarded to the Office of Administrative Hearings, the designated 706 deferral agency.

(d) The OAH will assess the case to determine if within its authority. If so, the case will be assigned an OAH docket number. If the case is not within OAH's authority the case will be returned to EEOC.

.0003 NOTIFICATION OF INVESTIGATION

(a) Upon a determination to investigate a case the OAH will notify the complainant and the respondent that an investigation will be commenced.

(b) Any person involved in a case wishing to submit information regarding the case must do so through written correspondence and sent to:

Director of Mediation Services
Office of Administrative
Hearings
P. O. Drawer 11666
Raleigh, N.C. 27604

The correspondence must state the names of complainant and the respondent and the OAH docket number.

.0004 ADDITIONAL INFORMATION

Persons desiring information in

addition to that provided in a particular case may contact:

Division of Mediation Services
Office of Administrative
Hearings
P. O. Drawer 11666
Raleigh, N.C. 27604

.0005 INVESTIGATION

(a) All deferred cases received by OAH will be assigned to an OAH Mediation Specialist.

(b) The Mediation Specialist will conduct a comprehensive investigation of the charges, interviewing the charging party, appropriate agency personnel and any necessary witnesses. The Mediation Specialist will subpoena, seek and obtain copies of all pertinent policies and documents from the agency and charging party.

(c) The investigation will be conducted in a timely manner.

.0006 INVESTIGATION REPORT

(a) An investigation report will be prepared examining the allegations in the deferral charge and applying the information produced during the investigation.

(b) The Mediation Specialist will determine whether there is probable "Cause" or "No Cause" to believe the alleged discrimination has occurred.

(c) If the investigation results in a "No cause" determination the report will be forwarded to the complainant, respondent and EEOC where this is OAH's final action.

(d) If the investigation results in a "Cause" determination the deferral will go to the conciliation and settlement stage.

.0007 CONCILIATION AND SETTLEMENT

(a) The Mediation Specialist will contact the complainant and agency personnel to discuss the findings of the investigation and attempt a settlement of the deferral.

(b) Upon reaching a settlement constituting full relief and is acceptable to both parties, the settlement documentation shall be forwarded to the EEOC along with the case file.

(c) Having determined that a settlement cannot be reached within thirty days after distribution of the investigation report, the case shall be forwarded to the Administrative Law Judges for a contested case proceedings.

.0008 HEARING

(a) A hearing before an Administrative Law Judge of the Office of Administrative Hearings will be conducted.

(b) The Administrative Law Judge will forward a recommended decision to the complainant and the respondent.

(c) If a settlement acceptable to both parties is reached the case is resolved.

(d) Upon settlement a copy of the documentation shall be sent to EEOC along with the case file.

(e) If a settlement constituting full relief cannot be reached the Investigation Report, the Administrative Law Judge's recommended decision and the case file will be forwarded to EEOC for resolution.

FINAL RULES

When the text of any adopted rule differs from the text of that rule as proposed, the text of the adopted rule is published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

TITLE 19A - TRANSPORTATION

SUBCHAPTER 2B - HIGHWAY PLANNING

SECTION .0100 - RIGHT OF WAY

.0143 THE SALE OF SURPLUS LANDS

(a) Department of Transportation policy relative to disposal of remainder properties acquired in connection with acquisition of right of way is as follows:

(1) The sale of all residues will be by public sale except as hereinafter specified.

(2) Residue properties sold by public sale are to be sold by either sealed bid, or by auction at the election of the right of way branch. The sale of such properties must be advertised by publication in a newspaper having general circulation in the county in which the property is situated. After opening bids or closing of auction, no upset bids will be considered. The high bid shall be presented to the Department of Transportation at its next regular meeting after the date of the sale for rejection or acceptance. The Department of Transportation reserves the right to reject all bids.

(3) Those residue properties located adjacent to controlled access projects that are landlocked may be sold to the adjoining property owner by

negotiation rather than public sale for a consideration not less than the appraised value of the residue.

(4) Residue properties may be sold to state agencies and institutions and other governmental units by negotiation rather than public sale for a consideration not less than the appraised value of the residue.

(5) Residue property acquired in connection with right of way for a project may be used for the purpose of exchange in part or full consideration for right of way being acquired from another property owner on the project. Such exchanges to be based on the appraised values of the residue property and the right of way to be acquired.

(6) Residues which have an area of one-half acre or less or a value of one thousand dollars (\$1,000) or less and the highest and best use is for assemblage with adjacent property may be sold without advertising by negotiations to an adjoining owner. The Property Management Unit together with an area appraiser will determine the value of the residue based on its after value as indicated in the original appraisal, sales of similar properties and sales of other residues, if any, in the area. After a value has been established, the State Property Manager may negotiate with the adjoining owners concerning the disposal of each residue. The decision of the State Property Manager to accept and complete a sale is final.

(7) The Manager of Right of Way is delegated authority to dispose of residues with appraised values of less than one hundred dollars (\$100.00) by executing and delivering on behalf of the Department of Transportation, a quit claim deed to the buyers of such residues, after the transactions are first approved by the Board of Transportation. Conveyances of residues with appraised values of less than one hundred dollars (\$100.00) shall not require the

approval of the Governor and Council of State.

(b) Should the Department of Transportation purchase a property in its entirety for right of way purposes and at a later date reduce the right of way, thus creating a residue, the original owner shall be offered the first refusal to purchase the residue. The purchase price is to be negotiated with the former owner or other prospective buyers taking into consideration the purchase price paid by the Department of Transportation, the current value of the

property, and the proportionate part of the entire tract being retained by the Department of Transportation. In the event the former owner does not desire to repurchase the residue area, the residue shall be offered for sale at public sale with the right reserved to reject all bids.

History Note: Statutory
Authority G.S. 136-18(2);
136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1986;
August 1, 1982.

NORTH CAROLINA ADMINISTRATIVE CODE

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EDITION X, NO. 7

EFFECTIVE: October 1, 1986

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ACTION TAKEN

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1 NCAC 21D .0100-.1000

Eff. August 25, 1986
Transferred and Recodified
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9 NCAC 2

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Eff. July 23, 1986

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10 NCAC 7A .0101
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INSURANCE

11 NCAC 4 .0200

Eff. August 14, 1986
Transferred and Recodified
as: 11 NCAC 11G .0001-.0008

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12 NCAC 4A .0101
4C .0208-.0209

Amended
Amended

NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

15 NCAC 10F .0351 Adopted
17C .0002 Amended

OCCUPATIONAL LICENSING BOARDS

21 NCAC 8G .0404 Amended
16A .0001 Amended
.0002-.0003 Repealed
16B .0201 Amended
.0307-.0309 Amended
.0310-.0314 Repealed
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.0316 Adopted
16C .0304 Amended
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16H .0104 Amended
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	.0603	Amended
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38	.0306-.0307	Adopted
50	.0108	Amended

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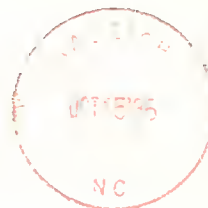
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